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THE LAW
RELATING TO
Highways and Bridges

TOGETHER WITH
The Lighting Act, 1833.

BY
G. F. CHAMBERS.

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THE LAW

RELATING TO

Highways and Bridges

BEING

The Statutes in full

AND BRIEF NOTES OF 700 LEADING CASES,

THE WHOLE EXHIBITED IN A CONVENIENT FORM FOR REFERENCE,

FOR THE ESPECIAL USE OF OFFICERS OF MUNICIPAL CORPORATIONS, LOCAL
BOARDS, AND HIGHWAY BOARDS, AND OF JUSTICES' CLERKS,

TO WHICH IS ADDED THE LAW RELATING TO THE

LIGHTING OF RURAL PARISHES

UNDER THE

"Lighting Act, 1833."



BY

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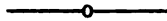
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Addenda et Corrigenda.



Page 18.—§ 44 of the "Highway Act, 1835," has been repealed since this page was printed off, by the "Highway Act, 1878," § 9.

Page 72.—§ 36 of the "Highway Act, 1864," has been repealed in part and modified in part, since this page was printed off, by the "Highway Act, 1878," § 9.

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Preface.

THIS volume is not submitted to the Public as an ambitious Treatise on the subject of Highways, but as simply a Repertory of useful information based upon the modern Statutes and modern decisions in the Superior Courts. Though, of course, there has been such a thing as Highway Law from a very early period in the History of England it so happens that for guidance in the administration of the Law in the present day one has not to look, speaking generally, beyond the limits of a comparatively small number of Statutes, all of recent date, or beyond the Cases which have been decided upon those Statutes.

These observations will suggest a reason why I have not attempted to work up my materials into the form of a Treatise ; for though, like most other branches of Statute Law, the " Highway Acts " may be said to exhibit a good deal of patchwork, yet this criticism is not sweepingly true of Highway Law in the sense in which it is true of Public Health Law, as to which Digests, and Abstracts, and Indexes of the most elaborate character are requisite if a reader would find his way about through the maze of confusion and contradiction which Parliament has manufactured during the last quarter of century, and which has given so much work to lawyers.

The Highway Division of this work has been arranged more especially with the view of its being useful to Clerks of Highway Authorities, whether Town Clerks or Clerks of Local Boards or Highway Boards, for purposes of reference.

Part I. contains the Statutes in strictly chronological order, with such few notes and references as seemed requisite, but without, as a rule, formal explanatory comments.

Part II. contains Notes of nearly all the decisions on Highway Law which are at all likely to be useful in the present day. These Notes will seldom be found to be mere transcripts of the Head Notes of the Reports, but in most instances furnish an original Digest of the leading principles of Law which are to be gathered from the particular Cases, and they are so arranged as far as may be, to enable the practitioner to dispense with the necessity of consulting for himself a number of bulky volumes. As the *Law Journal Reports* have been published continuously from a time preceding by several years the "Highway Act, 1835," that periodical has been named first in the references as often as it contained a Report of a Case; then follow references to other Reports.

In making a Scheme for the classification of the Cases I have experienced great difficulty, and I am far from wishing it to be considered that the classification adopted cannot be improved. The Cases have been arranged in what, according to the best of my judgment, was the most convenient order for purposes of reference. The Cases of each group are arranged alphabetically.

Turnpike Roads have been almost entirely ignored in this work for the twofold reason that they are regulated by an enormous number of what are virtually Private Acts of Parliament, and because the day may not be far distant when Turnpike Highway Law will have ceased to exist because of the entire abolition of Turnpikes.

The General Index to the Highway Division of the work will be found so full as to constitute what might almost be called an Analytical Digest of Highway Statute Law.

As regards the Division of the work which relates to the Lighting of Roads in Rural Parishes I only desire to say that the subject is obviously one so closely related to that of Highways that there is no incongruity (but the reverse) in dealing with both matters in the same volume. But the materials as to the Law of Lighting are scanty: such as they are they will be found in Book II. of this work.

In the preparation of the "Digest of Cases" I have received most material assistance from *Mr. H. J. Hood*, of the Equity Bar. His patient and careful revision of my M.S. notes has greatly contributed to their practical usefulness.

G. J. C.

1, Cloisters, Temple,
September, 1878.

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A TABULAR STATEMENT OF SOME OF THE MORE COMMON OFFENCES

RELATING TO HIGHWAY MATTERS
WHICH ARE WITHIN THE SUMMARY JURISDICTION OF JUSTICES.

SUBJECT.	STATUTE.	MAXIMUM FINE.
Surveyor refusing to serve when elected	1835, § 8	£20
Neglect of duty by Surveyor generally	1835, § 20	£5
Refusal to allow Surveyor to inspect Poor Rate book	1835, § 28	£5
Default in performance of task work	1835, § 35	As Justices may deem "reasonable."
Collector failing to account	1835, § 38	Distress for amount.
Collector wilfully neglecting to account.	1835, § 38	£20
Misconduct of Surveyor as to his books	1835, § 40	£5
Neglect by Surveyor to hand over property	1835, § 42	£5 and double the money due.
Surveyor being interested in a contract	1835, § 46	£10
Removal of materials belonging to Surveyor	1835, § 48	£10
Neglect by Surveyor to fill up or trim holes	1835, § 55	10s. or, after notice from parties, £10.
Surveyor allowing heaps of stone, &c., to remain on Highway unguarded	1835, § 56	£5
Surveyor causing damage in getting materials	1835, § 57	£5 and liability to Civil Action.
Non-payment of costs awarded in respect of repairs <i>ratione tenuræ</i>	1835, § 60	Distress for amount.
Default of landowner, &c., in removing trees near carriageways	1835, § 64	10s.
Non-compliance with Order of Justices to lop hedges, &c.	1835, § 65	£2
Interference by landowner, &c., with gutters, &c.	1835, § 68	Expenses of making good; together with 3 times the amount as penalty.
Encroachments on a Highway	1835, § 69	£2, together with the cost of removing encroachment.
Erecting engines, &c., or making fires, &c., near Highways	1835, § 70	£5
Committing various offences on Highways.	1835, § 72	£2; together with value of damage.
Pound-breach	1835, § 75	£20
Neglect by owner of cart to exhibit his name thereon.	1835, § 76	£2
One driver improperly driving 2 carts	1835, § 77	£1
Driver of cart without reins, riding on his cart, and no one to guide: causing damage: quitting the road: leaving his cart unattended: obstructing road: driving cart without owner's name: refusing to disclose owner's name: being on wrong side of road: riding or driving furiously so as to endanger life or limb	1835, § 78	£5: or £10 if owner and Civil Liability continues.
Driver refusing to give his name	1835, § 78	£5
Neglect of Surveyor or others to repair a Highway	1835, § 94	£5: and on further default to repair, the estimated cost of repairing.
Neglect to pay costs awarded.	1835, § 97	Distress for amount.
Witness duly paid, refusing to give evidence	1835, § 102	£5
Default of Railway Company to keep Crossing gates closed	2 & 3 Vict., c. 45, § 1	£5 per day.
Default of Highway Surveyor to pay subsidy to Turnpike Road Authority	4 & 5 Vict., c. 59, § 2	Distress for amount.
Default of Clerk of Highway Board to transmit accounts to Local Government Board	25 & 26 Vict., c. 61, § 27	£10
Default of Officers of Highway Board to deliver up books and property	40 & 41 Vict., c. 66, § 1	
Permitting cattle to stray about Highways	25 & 26 Vict., c. 61, § 31	Distress for amount.
Encroachments on a Highway as limited and defined	27 & 28 Vict., c. 101, § 51	5s. for every animal together with expenses of removal up to 30s. as a maximum.
Breach of the statutory limit for speed of Locomotives on Highways.	28 & 29 Vict., c. 83, § 4	£2
Neglect to affix to Locomotive owner's name and address	28 & 29 Vict., c. 83, § 7	£10
Offences against By-laws prescribed for Highways by County Authority	41 & 42 Vict., c. 77, § 26	£2
Using Locomotives on Highways contrary to the Statute	41 & 42 Vict., c. 77, § 28	£5
Locomotive not consuming its own smoke	41 & 42 Vict., c. 77, § 30	£5
Breach of By-laws to regulate Locomotives	41 & 42 Vict., c. 77, § 31	£5

BOOK I.

PART I.

Statutes relating to Highways and Bridges.

THE Statutes here printed are given in their chronological order without any attempt at classification.

It is believed that for purposes of reference the inconvenience of having to examine several sets of Statutes to find any required one, is greater, on the whole, than the inconvenience of having kindred Statutes separated from one another by others because those others happen to be of intermediate date.

Repealed provisions are either omitted altogether, or where for any reason that course would have been undesirable such provisions are printed in *Italic*, and sometimes within brackets.

Provisions only applicable to the Metropolis, Scotland, or Irelaand, are as far as possible omitted, Asterisks taking the place thereof.

The Marginal Notes have been in most cases simplified and shortened so as to make them more convenient.

The Foot-notes are designed to be just numerous and ample enough to prevent a person who consults only the Statutes being seriously mislead for want of sufficient cross references to earlier and later Statutes. Explanatory comments have been very sparingly supplied.

The text of the *Revised Statutes*, up to date, has been made use of as far as possible; and omissions by reason of repeals, &c., are therefore not particularised in citations from that edition of the Statutes. But where the citations are from the *Law Reports Statutes* exclusively, reasons are given to explain omissions. Formal words ("Be it enacted, &c. . . .") are uniformly struck out everywhere that they occur in the original text at the commencement of sections.

Book I.—HIGHWAYS AND BRIDGES.

2

A.D. 1738-9.

[12 GEO. II.]

County Rates.

[C. 29.]



12 GEO. II., c. 29.

*Revised
Statutes,
vol. II., p. 438.*

*An Act for the more easy Assessing, Collecting,
and levying of County Rates. [1738-9.]*

No repair of
Bridges, &c., but
upon Present-
ment of the
Grand Jury.

13. No part of the money to be raised and collected in pursuance of this Act shall be applied to the repair of any bridges, gaols, prisons, or houses of correction, until presentments be made by the respective Grand Juries at the Assize, great Sessions, General Gaol Delivery, or General or Quarter Sessions, of the Peace held for any County, Riding, Division, City, Town Corporate, or Liberty, of the insufficiency, inconveniency, or want of reparation of their bridges, gaols, prisons, or houses of correction.

Justices to con-
tract for repairs
of Bridges, &c.

14. From and after the 1st day of June, 1739, when any public bridges, ramparts, banks, or cops, or other works, are to be repaired at the expense of any County, City, Riding, Hundred, Division, Liberty, or Town Corporate, it shall and may be lawful to and for the Justices of the Peace, at their General or Quarter Sessions respectively, or the greater part of them then and there assembled, if they think proper and convenient, after presentment, to be made as aforesaid, of the want of reparation of such bridges, ramparts, banks, or cops, to contract and agree with any person or persons for rebuilding, repairing, and amending of such bridges, ramparts, banks, or cops as shall be within their respective Counties, Cities, Ridings, Hundreds, Divisions, Liberties, or Towns Corporate, and all other works which are to be repaired and done by assessment on the respective Counties, Cities, Ridings, Hundreds, Divisions, Liberties, or Towns Corporate, for any term or terms of years, not exceeding 7 years, at a certain annual sum, payment, or allowance for the same, such contractor or contractors giving sufficient security for the due performance thereof to the respective Clerk of the Peace for the time being, or the Town Clerk, High Bailiff, or Chief Officer of any City, Town Corporate, or Liberty;

And that such Justices, at their respective General or Quarter Sessions, shall give publick notice of their intention of contracting with any person or persons for rebuilding, repairing, and amending the bridges, ramparts, banks, or cops, and other works aforesaid;

And that such contracts shall be made at the most reasonable price or prices which shall be proposed by such contractors respectively;

And that all contracts when agreed to, and all orders relating thereto, shall be entered in a book to be kept by the respective Clerk of the Peace for the time being, or the Town Clerk, High Bailiff, or Chief Officer of any City, Town Corporate, or Liberty for that purpose, who is and are hereby required to keep them amongst the records of such County, City, Town Corporate, or Liberty, to be from time to time inspected at all seasonable times by any of the said Justices within the limits of their commissions, and by any person or persons employed or to be employed by any Parish, Township, or place contributing to the purposes of this Act, without fee or reward.

A.D. 1740-1.

[14 GEO. II.]

County Bridges.

[C. 33.]



14 GEO. II., c. 33.

*Revised
Statutes,
vol. II., p. 434.*

*An Act to supply some Defects in the Laws for
repairing and rebuilding County Bridges.
(1740-1.)*

WHEREAS it does and may happen that when County Bridges are to be rebuilt or repaired, a piece or parcel of ground thereto adjoining may be of great use or service, either for enlarging such Bridges or more commodiously rebuilding them: And whereas there is no power given by the Laws in being for rebuilding or repairing of County Bridges, to the Justices of the Peace to purchase any such pieces or parcels of ground

Part I.—STATUTES.

[14 GEO. II.]

County Bridges.

[C. 33.]

3

A.D. 1740-1.

Therefore, for the better repairing and rebuilding County Bridges Be it enacted, &c.

From and after the 24th day of June, 1741, the Justices of the Peace of any County, City, Riding, Liberty, or Division, at their General Sessions, or General Quarter Sessions assembled, or the major part of them, shall have power, and are hereby authorised to purchase of, or agree or contract with any person or persons, Bodies politick or Corporate, for any piece or parcel of land adjoining or near to any County Bridge within the limits of their respective Commissions, for the more commodious enlarging or convenient rebuilding the same, which pieces or parcels of land shall not exceed one acre in the whole for any such Bridge, and shall from time to time be paid for by the respective County Treasurers, out of any monies raised or to be raised by virtue of an Act made in the 12th year of the reign of His present Majesty, intituled "An Act for the more easy assessing, collecting, and levying of County Rates," such Treasurers being thereunto authorised, by Orders made under the hands and seals of the respective Justices of the Peace at their General Sessions or General Quarter Sessions, or the major part of them, which lands so purchased shall be conveyed to such person or persons as the said Justices of the Peace at their General Sessions or General Quarter Sessions, or the major part of them, shall respectively appoint, in trust, and for the uses and purposes of enlarging or rebuilding such Bridges respectively.

Justices may purchase lands to build County Bridges.

12 Geo. II. 29.

* * * * *

[43 GEO. III.]

County Bridges.

[C. 59.]

A.D. 1803.



43 GEO. III., c. 59.

An Act for remedying certain defects in the laws relative to the building and repairing of County Bridges, and other works maintained at the expense of the inhabitants of Counties in England.
(24th June, 1803.)

Revised Statutes, Vol. IV., p. 295.

WHEREAS the inhabitants of Counties in that part of the United Kingdom called England, are by Law bound to repair, support, and maintain the publick Bridges, commonly called County Bridges, within such Counties respectively, and the roads at each of the ends thereof for limited distances; but the laws empowering them so to do are insufficient and defective; and whereas doubts have arisen how far the said inhabitants are liable to improve such Bridges when they are not sufficiently commodious for the publick; for remedy thereof, be it enacted, &c.;

It shall be lawful to and for the Surveyor of Bridges and other publick works, in each and every County respectively within that part of the United Kingdom called England, appointed or to be appointed by the Justices at any General Quarter Sessions of the Peace to be holden for such County, and the said Surveyor is hereby authorised and empowered to search for, take, and carry away gravel, stone, sand, and other materials, for the repair of such Bridges and roads at the ends thereof, as the inhabitants of Counties are bound to repair, and to remove obstructions and annoyances from such Bridges and roads, in such and the same manner as the Surveyor or Surveyors of any common highway within this Kingdom, is or are by an Act made and passed in the 13th year of the reign of His present Majesty, intituled, "An Act to explain, amend, and reduce into one Act of Parliament, the Statutes now in being for the amendment and preservation of the publick highways within that part of Great Britain called England, and for other purposes," authorised to do;

Surveyors of County Bridges may get materials for the repair of Bridges as Surveyors of Turnpike Roads do.

13 Geo. III., 78.

And the several powers and authorities thereby vested in the Surveyor or Surveyors of Highways, as well for the getting of materials as the preventing and removing of all nuisances and annoyances from such Bridges and roads, shall be and the same are hereby vested in the Surveyor and Surveyors of County Bridges, and the roads at the ends thereof as aforesaid;

Book I.—HIGHWAYS AND BRIDGES.

4

A.D. 1803.

[43 GEO. III.]

County Bridges.

[C. 59.]

Quarter Sessions
may alter the
situation of
County Bridges,
&c.

And the several penalties, forfeitures, matters, and things, in the said Act contained, relating to highways, shall be and the same are hereby extended and applied, as far as the same are applicable, to such Bridges, and the roads at the ends thereof as aforesaid, as fully and effectually as if the same and every part thereof were herein repeated and re-enacted;

The said Surveyor or Surveyors making satisfaction and compensation for all trespass and damage done in the execution of the powers of this Act, in such and the same manner as the Surveyors of Highways are required to make in and by the said above mentioned Act of the 13th year of the reign of His present Majesty.^(a)

2. Where any Bridge or Bridges, or roads at the ends thereof, repaired at the expense of any County, shall be narrow and incommodious, it shall and may be lawful to and for the said Justices at any of their General Quarter Sessions, to order and direct such Bridge or Bridges, and roads, to be widened, improved, and made commodious for the publick;

And where any Bridge or Bridges, repaired at the expense of any County, shall be so much in decay as to render the taking the same wholly down necessary or expedient, it shall and may be lawful to and for the said Justices, at any of their said General Quarter Sessions, to order and direct the same to be rebuilt, either on the old site or situation, or on any new one more convenient to the publick, contiguous to or within 200 yards of the former one, as to such Justices shall seem meet;

And if, for the purpose of altering the situation, or of widening or enlarging any such Bridge or Bridges, road or roads as aforesaid, it shall be necessary to purchase any land or ground, it shall and may be lawful for such County Surveyor or Surveyors, by and under the direction of such Justices, at their General Quarter Sessions as aforesaid, to set out and ascertain the same, not exceeding in the whole one acre at any one such Bridge as aforesaid, and to contract and agree with the owner or owners of such land, and persons interested therein, for the purchase thereof, either by a sum in gross, or by an annual rent, at the option of such owner or owners;

And if the said Surveyor or Surveyors cannot agree with the said owner or owners for the purchase thereof, or the recompence to be made for the same, or by reason of such owner or owners not being to be found, shall be prevented from treating, then and in every such case, the said Justices in their General Quarter Sessions shall impanel a Jury, and assess the compensation and satisfaction for such land, and for the trespass and damage to be done by the execution of the powers of this Act, in the same manner as they are authorised and empowered to do by the said above mentioned Act of the 13th year of the reign of His present Majesty, in relation to highways;

And all and every the clauses, powers, provisions, exemptions, penalties, matters, and things, in the said Act contained, as well with respect to impannelling juries, examining and swearing witnesses, payments of expenses, enabling bodies politick, corporate, and collegiate, and other incapacitated persons, to sell and convey, and all other the powers and provisions of the said Act, shall be, and the same are hereby extended and applied to the works by this Act authorised to be done and performed, as far as the same are applicable, as fully and effectually, to all intents and purposes, as if the same were herein particularly repeated and re-enacted;

Provided, that no money shall be applied to the amendment or alteration of any such Bridge or Bridges, until presentment shall have been made of the insufficiency, inconvenience, or want of reparation of such Bridge or Bridges, in pursuance of some or one of the Statutes made and now in force concerning publick Bridges.

Tools and materials
vested in
the Surveyor.

3.(b) The right and property of all tools, implements, timber, bricks, stones, gravel, and other materials, purchased, gotten, or had, or to be purchased, gotten, or had, by or by the order of Justices in Counties, or the Surveyor of County Bridges for the time being, or in any respect belonging to such Counties, shall be and the same are hereby vested in such Surveyor for the time being; in whom upon any action or indictment being commenced or prosecuted, such property may be laid.

Counties may
sue for damage
done to Bridges
in the name of
the Surveyor.

4. The inhabitants of Counties shall and may sue for any damages done to Bridges and other works maintained and repaired at the expense of such Counties respectively, and for the recovering of any property belonging to such Counties, in the name of their Surveyor, and also shall and may be sued in the name of such Surveyor;

And no action or prosecution to be brought or commenced by or against the inhabitants of Counties, by virtue of this Act, in the name of the said Surveyor, shall abate or be discontinued by the death or removal of such Surveyor, or by the Act of the Surveyor, without the consent of the Justices at their General Quarter Sessions assembled, but the Surveyor for the time being shall be deemed the plaintiff or defendant in such actions, as the case may be;

Provided always, that every such Surveyor in whose name any action or suit shall be commenced, prosecuted, or defended, in pursuance of this Act, shall always be reimbursed and paid, out of the monies in the hands of the Treasurer of the publick stock of such County respectively, all such costs and charges as he shall be put unto or become chargeable with by reason of his being so made plaintiff or defendant therein; and also all the costs and charges of prosecuting any indictment or indictments, or other proceedings, against any person or persons whomsoever.

Description of
Bridges which
Counties shall
repair.

5. And, for the more clearly ascertaining the description of Bridges hereafter to be erected, which inhabitants of Counties shall and may be bound or liable to repair and maintain; be it further enacted, That no Bridge hereafter to be erected or built in any County, by or at the expense of any individual or private person or persons, Body politick or Corporate, shall be

(a) This Act has been repealed generally by the "Highway Act, 1835," but inasmuch as it is kept alive for the purposes of the present Act, it has been printed in the Appendix to the *Revised Statutes*, vol. iv., p. 670.

(b) So much of this section as relates to laying the property in the Surveyor of County Bridges in any Indictments is repealed by 7 Geo. IV., 16, § 32. (*Rev. Stat.*, vol. iv., p. 296.)

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[43 GEO. III.]

County Bridges.

[C. 59.]

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A.D. 1808.

deemed or taken to be a County Bridge, or a Bridge which the inhabitants of any County shall be compellable or liable to maintain or repair, unless such Bridge shall be erected in a substantial and commodious manner, under the direction or to the satisfaction of the County Surveyor, or person appointed by the Justices of the Peace at their General Quarter Sessions assembled, or by the Justices of the Peace of the County of Lancaster, at their annual General Sessions ;

And which Surveyor, or person so appointed, is hereby required to superintend and inspect the erection of such Bridge, when thereunto requested by the party or parties desirous of erecting the same :

And in case the said party or parties shall be dissatisfied, the matter shall be determined by the said Justices respectively at their next General Quarter Sessions, or at their annual General Sessions in the County of Lancaster.

6. All orders and proceedings made and had within the County of York, relative to County Bridges, shall in future be made and had by the Justices of the respective Ridings, assembled at the annual and General Quarter Sessions of the Peace holden the 1st whole week after Easter, and at no other Sessions whatever within such Ridings, except at such adjournment as shall be made at the above annual and General Quarter Sessions so holden as aforesaid, for the express purpose of carrying such orders made as aforesaid into effect :

Provided nevertheless, that it shall and may be lawful for any 2 Justices of the said Ridings respectively, in cases of emergency, to give such orders for making temporary Bridges, or such temporary repairs as shall be necessary for the temporary accommodation of the publick.

7. Nothing herein contained shall extend to any Bridges or roads which any person or persons, Bodies politick or Corporate, is, are, or shall be liable to maintain or repair by reason of tenure, or by prescription, or to alter or affect the right to repair such Bridges or roads.

8. This Act shall be deemed, adjudged, and taken to be a publick Act, and shall be judicially taken notice of as such by all Judges, Justices, and other persons whomsoever, without specially pleading the same.

County Bridges
in the County of
York.

Act not to ex-
tend to Bridges
repaired by rea-
son of tenure.

Public Act.

[52 GEO. III.]

County Bridges.

[C. 110.]

A.D. 1812.



52 GEO. III., c. 110.

An Act for amending an Act passed in the 12th year of His late Majesty King George the 2nd, intituled, "An Act for the more easy assessing, collecting, and levying of County Rates;" and for the remedying certain defects in the laws relating to the repairing of County Bridges and other works maintained at the expense of the inhabitants of Counties in England.

(9th July, 1812.)

Revised
Statutes,
vol. v., p. 184.

WHEREAS by an Act passed in the 12th year of His late Majesty King George II., intituled, "An Act for the more easy assessing, collecting, and levying of County Rates," it is enacted, that no part of the money to be raised and collected in pursuance of this Act shall be applied to the repair of any bridges, gaols, prisons, or houses of correction, until presentments be made by the respective Grand Juries at the Assize, Great Sessions, General Gaol Delivery, or General or Quarter Sessions of the Peace, held for any County, Riding, Division, City, Town Corporate or Liberty, of the insufficiency, inconveniency, or want of reparation of their bridges, gaols, prisons, or houses of correction ; and it is further enacted, that from and after the 1st day of June, 1739, when any public bridges, ramparts, banks or cops, or other works, are to be repaired at the expense of any County, City, Riding, Hundred, Division, Liberty or Town Corporate, it shall and may be lawful to and for the Justices of the Peace at their General or Quarter Sessions respectively, or the greater part of them then and there assembled, if they think proper and convenient, after presentment to be made as aforesaid of the want of reparation of such bridges, ramparts, banks or cops, to contract and agree with any person or persons for rebuilding, repairing, and amending of such bridges, ramparts, banks or cops, as shall be within

12 Geo. II. 29.

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A.D. 1812.

[52 GEO. III.]

County Bridges.

[C. 110.]

their respective Counties, Cities, Ridings, Hundreds, Divisions, Liberties or Towns Corporate, and all other works which are to be repaired and done by assessment on the respective Counties, Cities, Ridings, Hundreds, Divisions, Liberties or Towns Corporate, for any term or terms of years not exceeding 7 years, at a certain annual sum, payment, or allowance for the same, such contractor or contractors giving sufficient security for the due performance thereof to the respective Clerk of the Peace for the time being, or the Town Clerk, High Bailiff, or Chief Officer of any City, Town Corporate or Liberty; and that such Justices at their respective General or Quarter Sessions shall give public notice of their intention of contracting with any person or persons for rebuilding, repairing, and amending the Bridges, ramparts, banks or cope, and other works aforesaid, and that such contracts shall be made at the most reasonable price or prices which shall be proposed by such contractors respectively; and that all contracts when agreed to, and all orders relating thereto, shall be entered in a book to be kept by the respective Clerk of the Peace for time being, or the Town Clerk, High Bailiff, or Chief Officer of any City, Town Corporate or Liberty, for that purpose, who is and are hereby required to keep them amongst the records of such County, City, Town Corporate or Liberty, to be from time to time inspected at all seasonable times by any of the said Justices within the limits of their Commissions, and by any person or persons employed or to be employed by any Parish, Township, or place contributing to the purposes of this Act, without fee or reward: and whereas great expense in the repairs of County Bridges, ramparts, banks, cope, and other works appertaining to the same, and of the roads over the same, and of so much of the roads at the ends thereof as by Law is to be repaired at the expense of any County, Riding, Hundred, Division, Liberty or Town Corporate, and great inconvenience to the public may be often in a great measure prevented by the timely and immediate repair of any inconsiderable damage, injury, defect, or sudden want of repair or amendment of the same, without the delay which must generally arise from the necessity imposed by the aforesaid Act, of a presentment by the Grand Jury at the Assize, Great Sessions, or General or Quarter Sessions of the Peace held for any County, City, Riding, Division, Town Corporate or Liberty, of the want of reparation of the same; by means of which delay the aforesaid want of repair is often very much increased, to the great expense of the County, and great inconvenience of the public: and whereas it is also expedient that the Justices of the Peace of any County, City, Riding, Division, Town Corporate or Liberty, at their General Quarter Sessions respectively, before any presentment shall have been made as aforesaid, as directed by the aforesaid Act, of the want of repair of such roads, should be enabled without any such presentment to contract and agree with certain persons hereinafter mentioned for the repairing and amending of the same; and also for keeping the same in repair when so repaired and amended; be it therefore enacted, &c.

Quarter Sessions may appoint annually Justices to superintend repairs.

From and after the 1st day of July, 1812, it shall and may be lawful for the Justices of the Peace of any County, City, Riding, Division, Town Corporate or Liberty, at their General Quarter Sessions or Great Sessions respectively, to be holden in the week next after the clause of Easter, or the greater part of them then and there assembled, to appoint annually 2 or more Justices of the Peace acting in and for any Division of Justices in such County, City, Riding, Division, Town Corporate or Liberty, in or near which any such County Bridge, or any Bridge which is in part a County Bridge, ramparts, banks, cope, or other works appertaining to the same, or any part or parts thereof, or the roads over the same, or so much of the roads at the ends thereof as by Law is to be repaired at the expense of any County, City, Riding, Division, Town Corporate or Liberty, shall be situate, to superintend the same, and whenever it shall appear on their own inspection to be necessary for the purpose of preventing the further decay and injury of the same, to order any immediate repairs or amendments to be done to the same, or to any part thereof;

But it shall and may be lawful for any 2 such Justices so to be appointed as aforesaid, and any 2 such Justices are hereby empowered, by a written order signed by their hands respectively, to order such immediate repairs to be done by such person or persons as to them shall seem fit and proper;

Provided that in no case the sum to be expended by them in such repairs shall exceed the sum of £20;

And further, that such appointments of such Justices as aforesaid shall remain in force until one week after the following Easter Sessions respectively;

And that in case of the death of or removal of, or refusal to act by any such Justice or Justices so appointed as aforesaid, the said Court of General Quarter Sessions or Great Sessions may at any other of the 4 Quarterly Sessions appoint any other Justice or Justices to act for the remainder of the then current year, in the place of any such Justice or Justices so dying, removing, or refusing to act as aforesaid.

Quarter Sessions to order payment for repairs

2. It shall and may be lawful for the Justices of the Peace of any County, City, Riding, Division, Town Corporate or Liberty, at the General Quarter Sessions or Great Sessions which shall next happen after such repairs so ordered to be made by such Justices so appointed as aforesaid shall be completed, or the greater part of them then and there assembled, to order the payment of such sum or sums of money not exceeding £10, as shall be sufficient to pay for such repairs, to be made out of the County Rate, to such person or persons who shall have so repaired the same by such order of such Justices as aforesaid, although no presentment shall have been made by any Grand Jury at the Assize, Great Sessions, or General Quarter Sessions of the Peace of any County, City, Riding, Division, Town Corporate or Liberty in which such repairs shall have been done, of the want of such reparation, as by the said Act of the 12th year of His late Majesty King George II., above recited, was directed:

Certificate signed by two Justices.

Provided nevertheless, that before such payment be ordered to be made as aforesaid, a certificate be returned to such Justices of the Peace so assembled at such last-mentioned Sessions, signed by 2 at the least of such Justices so appointed as aforesaid, who shall have so ordered such repairs as aforesaid, stating the nature of such repairs, and the defects, damage, or injuries which they had so ordered to be repaired, and their reason for so ordering such immediate repairs as aforesaid:

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[C. 110.]

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Provided also, that such Justices of the Peace, so assembled as last aforesaid, be satisfied by the parties concerned that the charges made by them for such repairs are reasonable and just.

* * * * *

5. From and after the 1st day of July, 1812, it shall and may be lawful for the Justices of the Peace of any County, City, Riding, Division, Town Corporate or Liberty, at their General Quarter Sessions respectively, or the greater part of them then and there assembled, if they shall think proper and convenient, to contract and agree with the Commissioner or Commissioners, Trustees or Trustees, of any turnpike road within the said County, City, Riding, Division, Town Corporate or Liberty, or with their Surveyor or Clerk, or with both their Surveyor and Clerk, or with the Surveyor or Surveyors of the Highway of any Parish, place, or tithing within the said County, City, Riding, Division, Town Corporate or Liberty respectively, or with any other person or persons, for the maintaining and keeping in repair roads over any County Bridges, and of so much of the roads at the ending thereof as by law is to be repaired at the expense of any such County, City, Riding, Division, Town Corporate or Liberty, or any part of the same, for any term not exceeding 7 years, nor less than one, although no presentment shall have been made as directed by the said recited Act of the 12th year of His late Majesty King George II., of the insufficiency, inconvenience, decay, or want of repair of the same;

Justices may contract for the repair of Bridges,

Subject however to all the rules, restrictions, regulations, directions, and conditions required by the above recited Act, in case where the same shall have been presented or directed by that Act.

[54 GEO. III.]

County Bridges.

[C. 90.]

A.D. 1814.



54 GEO. III., c. 90.

An Act to explain and extend an Act [43 Geo. III., 59], and for extending the said Act to Bridges and other works maintained at the expence of Hundreds. (14th July, 1814.)

Revised Statutes, vol. V., p. 390.

WHEREAS doubts have been entertained whether the power contained in an Act passed in the 43rd year of the reign of His present Majesty, intituled "An Act for remedying certain defects in the laws relative to the building and repairing of County Bridges, and other works maintained at the expense of the inhabitants of Counties in England," for the purchasing of any land or ground, do extend to the purchase of any building or buildings, or other erections: For remedy whereof Be it enacted, &c.

All and every the powers and authorities in the said Act mentioned and contained, for the purchase of any land or ground for the purposes of the said Act, shall extend and be deemed and construed to extend to all such building or buildings or other erections, as may be necessary to be purchased for the purposes of the said Act.

2. And whereas it is expedient that the provisions of the said Act, except as after mentioned, should be extended to Bridges repaired by the inhabitants of Hundreds and other general Divisions of Counties:

Be it further enacted, that the said Act and all the powers and provisions thereof (except such provisions therein as relate to Bridges thereafter to be erected and built) shall extend as well to Bridges and the roads at the ends thereof repaired by the inhabitants of Hundreds, and other General Divisions in the nature of Hundreds, as to Bridges and the roads at the ends thereof repaired by the inhabitants of Counties.

Powers of recited Act to extend to purchase of buildings, &c.
Extension of recited Act to Bridges, &c., repaired by Hundreds, &c.

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A.D. 1815.

[55 GEO. III.]

County Bridges.

[C. 143.]



55 GEO. III., c. 143.

Revised
Statutes,
vol. v., p. 297.

An Act to amend the Acts relating to the building and repairing of County Bridges.

(6th July, 1815.)

43 Geo. III. 59.

WHEREAS in and by an Act made and passed in the 43rd year of the reign of His present Majesty, intituled "An Act for remedying certain defects in the laws relative to the building and repairing of County Bridges, and other works maintained at the expense of the inhabitants of Counties in England," it is enacted, that it should be lawful to and for the Surveyor of Bridges and other public works in each and every County respectively within that part of the United Kingdom called England, appointed or to be appointed by the Justices at any General Quarter Sessions of the Peace to be holden for such County, and the said Surveyors were thereby authorised and empowered to search for, take, and carry away gravel, stone, sand, and other materials, for the repair of certain Bridges therein mentioned, and roads at the ends thereof, being such as the inhabitants of Counties are bound to repair, and to remove obstructions and annoyances from such Bridges and roads in such and the same manner as the Surveyor or Surveyors of any common highway within this Kingdom is or are, by an Act passed in the 13th year of the reign of His present Majesty, intituled "An Act to explain, amend, and reduce into one Act of Parliament, the Statutes now in being for the amendment and preservation of the public highways within that part of Great Britain called England, and for other purposes," authorised to do; and the several powers and authorities thereby vested in the Surveyor or Surveyors of Highways, as well for the getting of materials as the preventing and removing of all nuisances from such Bridges and roads, should be, and the same were thereby vested in the Surveyor and Surveyors of County Bridges, and the roads at the ends thereof as aforesaid; and the several penalties, forfeitures, matters, and things in the said Act contained relating to highways, should be, and the same were thereby extended and applied as far as the same are applicable, to such Bridges and the roads at the ends thereof as aforesaid, as fully and effectually as if the same and every part thereof were therein repeated and re-enacted; the Surveyor or Surveyors making satisfaction and compensation for all trespass and damage done in the execution of the powers of that Act, in such and the same manner as the Surveyors of Highways are required to make, in and by the said recited Act: and whereas an Act was made in the 54th year of the reign of His present Majesty, intituled "An Act to explain and extend an Act passed in the 43rd year of His present Majesty, intituled 'An Act for remedying defects in the laws relative to the building and repairing of County Bridges and other works, maintained at the expense of the inhabitants of Counties in England,' and for extending the said Act to Bridges and other works maintained at the expense of Hundreds:" and whereas it is expedient, that Surveyors of County Bridges and other persons, being under contract for the rebuilding or repairing such Bridges, or Bridges repaired by the inhabitants of Hundreds and other General Divisions of Counties in the nature of Hundreds, should have a more extended power for procuring materials than is at present vested in such Surveyors of County Bridges, by the operation of the said 1st recited Act, so far as relates to the procuring of stone for such purposes from quarries; be it therefore enacted, &c.

18 Geo. III. 49.

54 Geo. III. 90.

Surveyors of
County Bridges,
and others em-
powered to take
stones for the
repair of
Bridges.

Order of Jus-
tices necessary.

Restrictions as
to use of certain
quarries.

From and after the passing of this Act it shall and may be lawful to and for every Surveyor of such Bridges in each and every County within that part of the United Kingdom called England, appointed or to be appointed by the Justices at any General Quarter Sessions of the Peace to be holden for such County; and also to and for the Bridge master or all and every persons or person who may at the passing of this Act, or from and after the passing thereof, be under contract for the rebuilding or repairing of any public Bridge, built or repaired at the expense of the inhabitants of any such County, Hundred, or General Division as aforesaid;

And such Surveyor and Surveyors, and also such other person or persons, are hereby authorised and empowered, with the consent and by the order of 2 Justices of the Peace, acting for the County in which such Bridge is intended to be rebuilt or repaired, first had and obtained for that purpose, to search for, work, dig, get, and carry away any stone, in, from, or out of any quarry or quarries whatsoever, within the County or Counties to which such Bridge may belong;

Other than and except such quarries as may be situated within a garden, yard, avenue to a house, lawn, park, paddock, or inclosed plantation, or as may now or hereafter have ornamental timber trees growing thereon, without the license or consent of the owner or owners of such quarry or quarries, as such Surveyor or other person or persons shall judge necessary for the rebuilding or repairing of such Bridges respectively, provided such quarry or quarries shall have been worked within the last 3 years preceding the time when such Bridge shall be about to be rebuilt or repaired;

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The said Surveyor or other person or persons making such satisfaction and recompense for the value of such stone, and also for the damage to be done to such quarry or quarries by the getting and carrying away the same, as shall be agreed upon between him or them, and the owner, occupier or other person interested in such quarry or quarries respectively ;

Satisfaction to be made.

And in case they cannot agree, or such owner or occupier or other person interested shall refuse to treat, then and in every such case the Justices of the Peace at their General or Quarter Sessions, or any 2 or more of them appointed for that purpose, 14 days notice having been given to the owner or his agent of the intention to require a Jury, shall cause the value of such stones and amount of such damage to be enquired into and ascertained by a Jury of indifferent men of the County, Riding, Division, City, Town, Liberty, or Precinct wherein the same shall be situated ;

In case of refusal to treat, value of the stones, and damage to be ascertained by a Jury.

And to that end shall summon and call before such Jury and examine upon oath (which oath any 2 or more of such Justices of the Peace is and are hereby empowered to administer) any person or persons whomsoever ;

And such Justices of the Peace, or any 2 of them, shall, by ordering a view or otherwise, use all ways and means for the information of themselves and of such Jury in the premises ;

Witnesses may be examined on oath.

And when such Jury shall have enquired of and ascertained the value of such stones and amount of such damage, the said Justices of the Peace shall thereupon order that the sum or sums, which shall so appear to be the value of such stones and amount of such damage shall be paid ;

Which verdict or inquisition and order shall be filed of record by the Clerk of the Peace, or other officer having the custody of the records of the said County, Riding, Division, City, Town, Liberty, or Precinct, and shall be final and conclusive to all intents and purposes whatsoever, against all parties and persons whomsoever claiming or to claim in possession, remainder, reversion, or otherwise, their heirs and successors, as well absent as present, infants, lunatics, idiots, and persons under coverture, or any other disability whatsoever, Corporations, Guardians, Committees, husbands, Trustees, and Attornies, or any other person or persons whomsoever.

2. And, for the summoning and returning such Juries, be it further enacted, That such Justices of the Peace, or any 2 of them, may issue their warrant or warrants to the Sheriff or Bailiff of any particular County, Riding, Division, City, Town, Liberty, or Precinct, within the limits, of which the quarry or quarries shall be situated, requiring him to impanel, summon, and return an indifferent Jury of 24 persons, qualified to serve on Juries, to appear before the said Justices, or any 2 of them, at such time and place as in such warrant or warrants shall be appointed ;

Justices of the Peace may require Sheriffs or Bailiffs to return Juries.

And such Sheriff or Bailiff is and are hereby required to impanel, summon, and return such number of persons accordingly ;

And out of the persons so impanelled, summoned, and returned, or out of such of them as shall appear upon such summons, the Justices of the Peace, or any 2 of them shall, and they are hereby empowered and required to draw by ballot, and to swear or cause to be sworn, 12 men, who shall be the Jury for the purposes aforesaid ;

And in default of a sufficient number of Jurymen so returned, the said Sheriff or Bailiff shall take such other honest and indifferent men of the bystanders, or that can speedily be procured to attend that service, to make up the number of 12 ;

And all persons concerned shall have their lawful challenges against any of the said Jurymen when they come to be sworn ;

And the said Justices of the Peace, or any 2 of them, shall have power from time to time to impose a fine or fines on such Sheriff or Bailiff, or his deputy or deputies, making default in the premises, and on any of the persons who shall be summoned and returned on such Jury, and who shall not appear, or appearing shall refuse to be sworn on the said Jury, or being sworn shall refuse to give or shall not give a verdict, or shall in any other manner wilfully neglect his or their duty therein, and also on any person who being summoned and required to give evidence before the said Jury, shall refuse or neglect to appear, or appearing shall refuse to be sworn or to give evidence, so that no such fine be more than £10, nor less than 20s., on any one person for one offence.

Penalty applicable to Jurymen &c.

3. In case any Jury shall give in and deliver a verdict for more money as the value of such stones and amount of such damage, than what shall have been offered for the purchase thereof by such Surveyor or other person or persons as aforesaid, the costs and expenses of summoning and maintaining the Jury and witnesses shall be borne and paid out of the Rates to be collected within such County respectively ;

Expenses of the Jury.

But if such Jury shall give in and deliver a verdict for no more or for less money than the money which shall have been so offered by such Surveyor or other person or persons as aforesaid, then the costs and expenses of summoning and maintaining the said Jury and witnesses shall be borne and paid by the person or persons with whom such controversy or dispute touching the value of such stones and amount of such damage shall arise, and shall be levied by the warrant of one of the said Justices, by distress and sale of the goods and chattels of the person or persons made liable to the payment thereof.

4. If any person or persons shall or may think himself, herself, or themselves aggrieved by any thing done or to be done in pursuance of this Act, such person or persons may within the space of 3 calendar months next after the cause of complaint shall have arisen, appeal to the Justices of the Peace at any General Quarter Sessions of the Peace to be holden for the limit wherein the cause of complaint shall arise, every such appellant first giving or causing to be given 14 days notice at least in writing, of his or her intention to bring such appeal, and of the cause or matter thereof, to the person or persons against whom such complaint shall be made, and within 3 days next after such notice entering into a recognisance before some Justice of the Peace acting for the County wherein the cause of complaint shall arise, with 2 sufficient sureties conditioned to try such appeal, and to abide by the order of and pay such costs as shall be awarded by the Justices at such Session aforesaid ;

Persons aggrieved may appear to Quarter Sessions.

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And the said Justices at such Session, upon due proof of such notice being given as aforesaid, and of the entering into such recognisance, shall hear and finally determine the cause and matter of every such appeal in a summary way, and make such award to the party appealing or appealed against, as the said Justices shall think proper ;

And the determination of such Justices so assembled shall be binding and conclusive to all intents and purposes.

Contracts for
the repair of
County Bridges,
&c.

5. And whereas it is expedient that the powers contained in an Act passed in the 43rd year of His present Majesty, intituled "An Act for remedying certain defects in the Laws relative to the building and repairing of County Bridges, and other works maintained at the expense of the inhabitants of Counties in England," for authorising the Justices of the Peace of any County, City, Riding, Division, Town Corporate or Liberty, at their General Quarter Session of the Peace, to contract for maintaining and keeping in repair roads over County Bridges, and so much of the roads at the ending thereof as by Law is to be repaired at the expense of Counties, although no presentment shall have been made of the want of repair, as directed by an Act passed in the 12th year of His late Majesty King George II., intituled "An Act for the more easy assessing, collecting, and levying of County Rates," should be extended to the Bridges as well as to the roads at the end thereof ;

12 Geo. II. 29.

From and after the day of passing this Act it shall and may be lawful to and for the Justices of the Peace of any County, City, Riding, Division, Town Corporate or Liberty, at their General Quarter Sessions respectively, to contract and agree, or to authorise any other person or persons to contract and agree, with any person or persons, for the maintaining and keeping in repair any County or Hundred Bridge, and the road over such County or Hundred Bridge, and so much of the road at the ends thereof as are by law liable to be repaired at the expense of any such County, Hundred, City, Riding, Division, Town Corporate or Liberty, or any part of the same ;

And the said Justices are hereby empowered to order such sum or sums of money as may be contracted for and agreed to be paid for the repairing, amending, and supporting such Bridges, and the roads over the same, or the ends thereof, to be paid (in cases where the County is liable to the repair thereof) by the Treasurer of the County out of the County Rate, or (in cases where the Hundred is liable to the repair of the same) by the Bridge Master (or other public officer charged with the repair of Bridges) of the Hundred by which such Bridge is liable to be repaired, for any term not exceeding 7 years, nor less than one, although no presentment of the insufficiency, decay, or want of repair of the same shall have been made, and although no public notice shall have been given by the said Justices, at their respective General or Quarter Session, of their intention to contract for the repair of such Bridges, or the roads at the ends thereof, as respectively directed by the said Act of the 12th year of His late Majesty King George II. :

Provided nevertheless, that before any such contract shall be made, the said Justices shall cause notices to be given in some public paper circulated in such County, City, Riding, Hundred, Division, Town Corporate or Liberty, of their intention to contract.

A.D. 1822. [3 GEO. IV.] *Turnpikes.* [C. 126.]



3 GEO. IV., c. 126.

*Revised
Statutes,
vol. v., pp. 898
and 901.*

***An Act to amend the General Laws now in being
for regulating Turnpike roads in that part of
Great Britain called England.***^(a)

(6th August, 1822.)

Encroachments
on roads.

118. If any person shall make or cause to be made any dwelling-house or other building, or any hedge or other fence on or at the sides of any Turnpike road, in such manner as to reduce the breadth or confine the limits thereof, or shall fill up or obstruct any ditch at the side thereof, or shall make or cause to be made any dwelling-house or other building, or any hedge or other fence, on any common or waste land on the side or sides of any Turnpike road, within the distance of 30 feet, if within 3 miles of any market town, or if beyond that distance within 25 feet from the middle or centre thereof, or shall make any drain, gutter, sink, or water-course across or

(a) The sections here given are incorporated by the "Turnpike Continuance Act, 1865." (28 & 29 Vict., 107, § 2).

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[3 GEO. IV.]

Turnpikes.

[C. 126.]

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otherwise break up or injure the surface of any Turnpike road or of any part thereof, or shall plough, harrow, or break up the soil of any land or ground, or in ploughing or harrowing the adjacent lands shall turn his or their plough or harrow in or upon any land or ground within the distances aforesaid from the middle or centre of any Turnpike road, made or to be made, or make any other encroachment on any Turnpike road within the distances aforesaid from the middle or centre thereof, every person so offending shall forfeit for every such offence 40s. to such person as shall make information of the same;

And it shall be lawful for the Trustees or Commissioners who have the care of any such road to cause such dwelling-house or other building, hedge, ditch, or fence, drain, sink, water-course, gutter, or other encroachment, to be taken down or filled up, or, where any ditch shall be filled up or obstructed, to be opened and cleansed, at the expense of the person or persons to whom the same shall belong;

And it shall and may be lawful for any one or more Justice or Justices of the Peace of the County where such offence shall be committed, upon proof thereof to him or them made upon oath, to levy, as well the expenses of taking down or filling up or cleansing such dwelling-house, or other building, hedges, ditches, drains, or other encroachments as aforesaid, as the several and respective penalties hereby imposed, by distress and sale of the offender's goods and chattels, rendering the overplus (if any) to the owner on demand.

124. And whereas doubts may arise as to what is to be deemed the road, or the centre of the road:

Be it therefore enacted, that where, in this or any other Act of Parliament relating to Turnpike roads, any matter or thing is directed or forbidden to be done within a certain distance of the centre of the road, that portion of ground shall be deemed and taken to be the road which has been maintained by the Trustees or Commissioners as hard road, and repaired with stones, gravel, or other materials used in forming roads, for 6 months immediately preceding any offence committed against such regulations:

And the centre of the road shall be the middle of such hard road, where, a line being drawn along the road or a point marked, an equal number of feet of hard road which have been so maintained and repaired as aforesaid for 6 months before shall be found on each side of such line or mark:

Provided always, that nothing herein contained shall authorise any person or persons to inclose or make any encroachment on any waste lands or grounds lying on the side of any Turnpike road, being part of the highway, and over which the King's subjects have been used and accustomed to pass:

But every person who shall enclose such waste lands and grounds, or obstruct the right of passage over the same, shall continue and be subject to the same process and penalties as if this Act had not been made.

What shall be deemed a road, and the centre of the road.

[5 & 6 WILL. IV.]

Highways.

[C. 50.]

A.D. 1835.



5 & 6 WILL. IV., c. 50.

An Act to consolidate and amend the Laws relating to Highways in that part of Great Britain called England. (31st August, 1835.)

Revised Statutes, vol. vii., p. 807.

WHEREAS it is expedient to amend the Laws relating to Highways in that part of Great Britain called England, and to consolidate the same in one Act, and to make other provisions respecting Highways:

5. In the construction of this Act the word "Surveyor" shall be understood to mean Surveyor of the Highways, or Waywarden;

The word "Parish" shall be construed to include Parish, Township, Tithing, Rape, Vill, Wapentake, Division, City, Borough, Liberty, Market Town, Franchise, Hamlet, Precinct, Chapelry, or any other place or district maintaining its own Highways;

And wherever anything in this Act is prescribed to be done by the inhabitants of any Parish in Vestry assembled, the same shall be construed to extend to any meeting of inhabitants contributing to the Highway Rates in places where there shall be no Vestry meeting, provided the same notice shall have been given of the said meeting as would be required by Law for the assembling of a meeting in Vestry;

Interpretation Clause.

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[5 & 6 WILL. IV.]

Highways.

[C. 50.]

And that the word "Highways" shall be understood to mean all roads, bridges (not being County Bridges), carriageways, cartways, horseways, bridleways, footways, causeways, churchways, and pavements;

And that the word "Justices" shall be understood to mean Justices of the Peace for the County, Riding, Division, Shire, City, Town, Borough, Liberty, or place in which the Highway may be situate or in which the offence may be committed;

And that the word "Church" shall be understood to include Chapel;

And that the word "Division" shall be understood to include limit;

And that the word "Owner" shall be understood to include occupier;

And "Inhabitant" to include any person rated to the Highway Rate;

And the words "Petty Session" or "Petty Sessions" to mean the Petty Session or Petty Sessions held for the Division or place;

And wherever in this Act, in describing or referring to any person or party, animal, matter, or thing, the word importing the singular number or the masculine gender only is used, the same shall be understood to include and shall be applied to several persons or parties as well as one person or party, and females as well as males, and several animals, matters, or things as well as one animal, matter, or thing, respectively, unless there be something in the subject or context repugnant to such construction;

And all the powers hereby given to, and notices, matters, and things required for, and duties, liabilities, and forfeitures imposed on Surveyors, shall be applicable to all persons, Bodies Politic or Corporate, liable to the repair of any Highway.

Surveyor to be elected annually.

6. The inhabitants of every parish maintaining its own Highways, at their first meeting in Vestry for the nomination of Overseers of the Poor in every year, shall proceed to the election of one or more persons to serve the office of Surveyor in the said parish for the year then next ensuing:

May be re-elected.

Provided always, that any outgoing Surveyor shall continue to act until his successor shall be appointed, and shall be re-eligible, and may be re-elected, and shall in such case continue to act and remain in office, anything herein contained to the contrary notwithstanding, and in such case notice of such election shall be given by the Chairman to the person elected, and to the outgoing Surveyor:

Provided always, that in any Parish where there is no meeting in the year for the nomination of Overseers of the Poor the inhabitants contributing to the Highway Rate shall meet at their usual place of public meeting upon the 25th day of March, or if that should happen to be a Sunday or Good Friday, then on the day next following, or within 14 days next after the said 25th day of March in every year, to elect one or more persons to serve the office of Surveyor for the said parish, which Surveyor shall repair and keep in repair the several Highways in the said parish for which he is appointed and which are now or hereafter may become liable to be repaired by the said parish.

Qualification of Surveyor.

7. Any person living within the Parish or any adjoining Parish, and having an estate in houses, lands, tenements, or hereditaments, lying within such Parish, in his own right or in right of his wife, of the value of £10 by the year, or a personal estate of the value of £100 (such person not living within the Parish being willing to serve the office), or being an occupier or tenant of houses, lands, tenements, or hereditaments (whether resident within the Parish or within any adjoining Parish) of the yearly value of £20 shall be eligible to be elected a Surveyor for the purposes of this Act:

Provided nevertheless, that no person who is now exempted by Law from serving the office of Overseer of the Poor shall be compellable to serve the office of Surveyor:

Provided also, that any person who may be chosen and elected to serve the said office of Surveyor may provide a sufficient deputy, such deputy to be approved of by the Justices at a Special Sessions for the Highways, who shall by writing under their hands testify their consent thereto.

Penalty on Surveyor not acting when chosen.

8. If any person who shall be so chosen and elected, and who is not exempt as aforesaid from serving the said office, shall refuse or neglect to take upon himself the office of Surveyor, or to provide a sufficient deputy, to be approved of as aforesaid, he shall forfeit on conviction before any 2 Justices any sum not exceeding £20, unless he can show to the said Justices good and sufficient cause why he should not be called upon to serve the said office:

Provided also, that every deputy so provided and approved of shall have the same powers and authorities, and be subject to the discharge of the same duty, and be liable to the same penalties, as any Surveyor appointed under the authority of this Act.

Surveyor may be appointed with a salary.

9.(a) Instead of electing such Surveyor as herein-before mentioned, it shall be lawful for the majority of the inhabitants so assembled as aforesaid in any Parish for the election of Surveyors as aforesaid to nominate and elect any one person of skill and experience to serve the said office of Surveyor of such Parish, and to fix such salary for the execution of such office as they shall think fit, which said appointment shall be in writing on paper without stamp, and signed by the Chairman of such meeting;

And such Surveyor, when so appointed, shall be invested with the same powers, and subject to the same duties, forfeitures, and penalties, as any Surveyor appointed under the authority of this Act would have been;

And such salary shall be paid out of the money raised under the authority of this Act, at such times and in such manner as shall have been agreed upon between the inhabitants so assembled as aforesaid and the person so nominated and elected as aforesaid:

(a) This section does not apply to any parish within a Highway District under the "Highway Act, 1862." (25 & 26 Vict., 61, § 42).

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Provided nevertheless, that if such Surveyor shall cease to act and be dismissed in the manner herein-after described, such salary shall also in like manner cease and determine.

10.(a) The Surveyor or Surveyors, at the time of passing his or their accounts as herein-mentioned, shall deliver to the Justices a statement in writing of the name and residence of the person appointed to succeed him or them as Surveyor or Surveyors.

Surveyor, on verifying accounts, to name his successor.

11. In case it shall appear on oath to the Justices at a Special Sessions for the Highways that the inhabitants of any parish have neglected or refused to nominate and elect a Surveyor or Surveyors in manner and for the purposes aforesaid, or that the outgoing Surveyor, except he had been directed by the inhabitants so to do, has delivered no statement of the name and residence of his or their successor or successors, or that the Surveyor is dead, or has ceased to possess the qualification, or is or has become disqualified in any manner herein mentioned, or that he has neglected to act, or refused to carry into operation the duties imposed upon him by this Act, it shall and may be lawful for such Justices, and they are hereby authorised and required, by writing under their hands, at their next succeeding Special Sessions for the Highways, to dismiss such Surveyor so neglecting to act, or refusing to carry into operation the duties imposed upon him by this Act, and to appoint any person whom they may think fit to be a Surveyor for such parish till the annual meeting then next ensuing for the nomination of Overseers or for the election of Surveyors as aforesaid, and with or without such salary as to the said Justices shall seem fit and proper ;

Power to Justices in certain cases to appoint a Surveyor.

And the said Surveyor when so appointed shall be invested with the same powers and be subject to the same duties, forfeitures, and penalties, as any Surveyor elected by the inhabitants of any parish as aforesaid would have been.

12. When a Parish is situated in more than one County, Division, or Liberty, the Surveyor so to be appointed as last aforesaid shall be appointed by the Justices at a Special Sessions for the Highways assembled in that County, Division, or Liberty in which the Church of the said parish shall be situate.

When Parish is situate in more than one County.

13.(b) And whereas it is expedient that in many cases Parishes should be formed into districts for the purpose of having one sufficient person to be the District Surveyor, who should have the superintendence and management of the funds to be raised and levied under the provisions of this Act in each Parish forming part of such District :

Parishes may direct application to Quarter Sessions for forming them into Districts.

It shall and may be lawful for the inhabitants of any Parish in vestry assembled, if they shall think fit, to empower and direct one of the Churchwardens of such parish, or the Chairman of the said Vestry, to make application to the Justices assembled at the Quarter Sessions for the County, or where the Parishes to be united shall be situated in the same Division, at some Special Sessions for the Division in which such Parish shall be situate, for the purpose of being united with one or more Parishes to form a District for the purposes aforesaid, and at the same time to nominate one fit and proper person to be returned to the said Justices to be appointed as such District Surveyor, together with the amount of the yearly salary which the said inhabitants in such Vestry assembled shall agree to pay to such District Surveyor, which application, with the name of such last-mentioned person, shall be forthwith made in writing signed by the Churchwardens of the said parish, or by the Chairman of the said Vestry as aforesaid, and forwarded to the Clerk of the Peace in and for the said County or to the Clerk of the Justices in and for the said Division, as the case may be, who shall lay the same before the Justices at the Quarter Sessions then next holden in and for the said County, or at the Special Sessions as aforesaid.

14.(c) On such application as aforesaid being made by 2 or more Parishes to the said Justices they are hereby authorised, at the said Quarter Sessions or at some Special Sessions as aforesaid, to take the same into their consideration, and to unite such and so many of the Parishes so applying as aforesaid as they shall think fit, into a district or districts for the purposes of this Act ;

Justices may unite Parishes into Districts, and appoint a District Surveyor.

And the said Justices shall select and appoint out of the persons so nominated as aforesaid by the several Parishes so united into one district one fit and competent person to be the Surveyor for such district composed as aforesaid, which appointment shall be in writing.

15.(d) The names of the said Parishes so united, and the name of the person so appointed as District Surveyor, shall be reduced into writing, signed by the Chairman of the said Quarter Sessions, or by the majority of the Magistrates present at such Special Sessions, and shall be transmitted by him or them to the Clerk of the Peace, who shall lay the same before the Justices assembled at the Quarter Sessions in and for the said County, or at some adjournment thereof, who are hereby authorised and required to cause the same to be enrolled with the records of the Court ; and a copy thereof shall be sent by such Clerk of the Peace to each of the Churchwardens or the Surveyor of each of the said Parishes so united ;

Names of Parishes and of District Surveyor to be recorded, and sent to each Churchwarden, &c.

And such Parishes so united shall continue to form a district for the purposes of this Act for the space of 3 years then next following, and from thenceforward until the Churchwarden of any one of the said Parishes so united, or the Chairman of the Vestry, shall, by direction and in pursuance of a resolution of the inhabitants in Vestry assembled, give 12 months notice to the Churchwardens and Surveyor of each of the other Parishes, and to the said District Surveyor appointed by the said Justices, and to the Clerk of the Peace of the County in which the said Parishes are situate, of the intention of the said Parish to cease to form a part of the said district ;

Parishes when united to form a District for three years, and until twelve months after any Parish gives notice to cease to belong to said District.

In which case, from and after the expiration of the said 12 months notice, the union of the said Parishes into such district as aforesaid, and the appointment of the said District Surveyor,

(a) This section does not apply to any parish within a Highway District under the "Highway Act, 1862." (25 & 26 Vict., 61, § 42).

under the "Highway Act, 1862." (25 & 26 Vict., 61, § 42).

(b) This and the 6 following sections do not apply to any Parish within a Highway District

(c) See note to § 13, *ante*.

(d) See note to § 13, *ante*.

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[5 & 6 WILL. IV.]

Highways.

[C. 50.]

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District Surveyor to have power, &c., of Surveyor, except in levying Rate.

shall cease and determine, so far as may concern or be binding on the said Parish so giving such notice as aforesaid.

16.(a) Such District Surveyor when so appointed shall for all the purposes of this Act, except the making, assessing, and levying the Rate in and by this Act authorised to be made, assessed, and levied, have, as far as the same are applicable, the same powers, and be subject and liable to the same duties, penalties, and forfeitures, as any Surveyor elected under the provisions of this Act is invested with and liable to, and shall have the laying out and application of all the funds raised and levied under the authority of this Act :

Provided nevertheless, that such District Surveyor shall not expend any monies levied in any one of the said united Parishes except for the use and benefit of the Parish in which it is so levied, unless with the consent of the inhabitants of such Parish in Vestry assembled, for the purpose of carrying on repairs or beneficial improvements under the provisions of this Act for the common benefit of the said united Parishes :

Salary of District Surveyor how to be paid.

And such District Surveyor shall annually receive from each of the Parishes composing his district respectively such salary as shall have been agreed upon by the several Parishes in manner aforesaid, which salary shall be paid to such District Surveyor by the Surveyor of the Highways out of the money raised in each of such Parishes under the authority of this Act ;

And in case of nonpayment thereof the same shall be recoverable from the Surveyors of the Highways of such Parishes, to and for his own use, in the same manner as any forfeiture is recoverable under this Act.

When Parishes are united, a Surveyor to be appointed to make Rates.

17.(a) In each of the Parishes so united into a district as aforesaid a Surveyor shall be elected, as herein mentioned, in addition to the District Surveyor so appointed as aforesaid :

Provided nevertheless, that such Surveyor shall only be authorised and required to make, assess, and levy the Rate herein directed to be made, assessed, and levied, and from time to time pay over the money arising therefrom to such District Surveyor.

Appointment of a Board directing repairs in large Parishes.

18.(a) And whereas it is expedient in large and populous Parishes that the repairs of the Highways should be under the direction and control of a certain number of inhabitants, to be chosen and appointed as a Board for that purpose, with necessary powers :

In any parish where the population by the then last census taken from the returns made to Parliament exceeds the number of 5000, if it shall be determined by a majority of two-thirds of the votes of the Vestrymen present at such meeting as aforesaid to form a Board for the superintendence of the Highways of the said Parish, and for the purpose of carrying the provisions of this Act into effect, it shall be lawful for the said Vestry to nominate and elect any number of persons not exceeding 20 nor less than 5, being respectively householders, and residing in and assessed to the Rate for the Relief of the Poor of the said Parish, and also liable to be rated to the repair of the Highways in the said Parish under and by virtue of this Act, to serve the office of Surveyors of the Highways for the year ensuing ;

Powers of the Board.

And such persons so to be nominated and elected as such Surveyors, or any 3 of them, shall and are hereby authorised to act as a Board, and to be called "The Board for Repair of the Highways in the Parish of " (as the case may be), and to carry into effect the powers, authorities, and directions in this Act contained ;

And such Board are hereby authorised to appoint a Collector or any number of Collectors of the Rates to be made under the authority of this Act, and also to employ a person of skill and experience to act as an Assistant Surveyor to the said Board, and also a Clerk to attend the said Board, and to keep the accounts and minutes of the proceedings thereof, such Assistant Surveyor and Clerk to be paid such reasonable salaries out of the said Rates as the said Board shall determine ;

And upon such Board being so nominated and elected as aforesaid, all and every the powers and authorities given and created by this Act and granted to or vested in the Vestry, and in any person or persons as Surveyor, shall, for the purposes of the Parish so nominating and electing such Board, be and the same are hereby declared to be vested in the said persons so to be elected, or any 3 of them, acting as such Board as aforesaid ;

And such persons or any 3 of them, at a meeting to be convened for that purpose, may and they are hereby authorised to nominate and appoint a fit and proper person to be Treasurer for the deposit of the monies to be collected for the purposes of this Act, and to take from such person good and sufficient security for the monies to be deposited in his hands as aforesaid ;

And all monies to be drawn from such Treasurer for the purposes of this Act shall be drawn by drafts or cheques to be signed by the said persons so to be nominated and elected as aforesaid, or any 3 of them, at some one of their meetings to be held under this Act, and such drafts shall be respectively signed and entered in their books by the said Clerk to be appointed as aforesaid :

Provided always, and it is hereby declared, that upon the expiration of the year for which such Board shall be elected as aforesaid, and before or on the day for the nomination and election of persons as Surveyors under the authority of this Act, the said Board shall and are hereby directed to present to the Vestry of the Parish for which they shall have acted copies of all their accounts and also of the minutes of their proceedings during the preceding year.

Board may hire or purchase premises.

19.(a) It shall and may be lawful to and for such Board to rent, or, with the consent of the Vestry of any Parish, to purchase, a fit and convenient piece of ground or other premises for the keeping of the implements and materials necessary for the reparation of the highways, or for the preparing the materials for the same respectively, and to determine and direct how and in what manner the Highways in the said Parish, or any or either of them, or any and what part or parts thereof, shall be curbed or paved with stone or otherwise.

Penalty on Surveyor, &c., for neglect.

20.(b) If any Surveyor or District Surveyor or Assistant Surveyor shall neglect his duty in

(a) See note to § 13, *ante*.

(b) This section does not apply to a Highway

Board formed under the "Highway Act, 1862." (25 & 26 Vict., 61, § 42).

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Highways.

[C. 50.]

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anything required of him by this Act, for which no particular penalty is imposed he shall forfeit for every such offence any sum not exceeding £5.

21. If any Bridge shall hereafter be built, which Bridge shall be liable by Law to be repaired by and at the expense of any County or part of any County, then and in such case all Highways leading to, passing over, and next adjoining to such Bridge shall be from time to time repaired by the Parish, person, or Body Politic or Corporate, or Trustees of a Turnpike road, who were by Law before the erection of the said Bridge bound to repair the said Highways :

As to repair of Highway adjoining Bridges hereafter to be built.

Provided nevertheless, that nothing herein contained shall extend or be construed to extend to exonerate or discharge any County or any part of any County from repairing or keeping in repair the walls, banks, or fences of the raised causeways and raised approaches to any such Bridge, or the land arches thereof.

Raised Causeways, &c.

22. The several powers and authorities hereby vested in the Surveyor of Highways, as well for the getting of materials as the preventing and removing of all nuisances and annoyances, shall be and the same are hereby vested in the Surveyor of County Bridges, and the roads at the ends thereof repairable therewith :

Powers of Surveyors of County Bridges, and roads at ends thereof.

And the several penalties, forfeitures, matters, and things in this Act contained relating to Highways shall be and the same are hereby extended and applied, as far as the same are applicable, to such bridges, and the roads at the ends thereof as aforesaid, the said Surveyor or Surveyors of County Bridges making satisfaction and compensation for all trespass and damage done in the execution of the powers of this Act, in such and the same manner as the Surveyors of Highways are required to make under the provisions of this Act.

23. No road or occupation way made or hereafter to be made by and at the expense of any individual or private person, Body Politic or Corporate, nor any roads already set out or to be hereafter set out as a private driftway or horsepath in any award of Commissioners under an Inclosure Act, shall be deemed or taken to be a Highway which the inhabitants of any parish shall be compellable or liable to repair, unless the person, Body Politic or Corporate, proposing to dedicate such Highway to the use of the public shall give 3 calendar months previous notice in writing to the Surveyor of the Parish of his intention to dedicate such Highway to the use of the public, describing its situation and extent, and shall have made or shall make the same in a substantial manner and of the width required by this Act, and to the satisfaction of the said Surveyor and of any 2 Justices of the Peace of the Division in which such Highway is situate, in Petty Sessions assembled, who are hereby required, on receiving notice from such person, or Body Politic or Corporate, to view the same, and to certify that such Highway has been made in a substantial manner, and of the width required by this Act, at the expense of the party requiring such view, which certificate shall be enrolled at the Quarter Sessions holden next after the granting thereof, then and in such case, after the said Highway shall have been used by the public, and duly repaired and kept in repair by the said person, Body Politic or Corporate, for the space of 12 calendar months, such Highway shall for ever thereafter be kept in repair by the Parish in which it is situate :

When new Highways are to be kept in repair by Parishes.

Provided nevertheless, that on receipt of such notice as aforesaid the Surveyor of the said Parish shall call a Vestry Meeting of the inhabitants of such Parish ;

Provided.

And if such Vestry shall deem such Highway not to be of sufficient utility to the inhabitants of the said Parish to justify its being kept in repair at the expense of the said Parish, any one Justice of the Peace, on the application of the said Surveyor, shall summon the party proposing to make the new Highway to appear before the Justices at the next Special Sessions for the Highways to be held in and for the Division in which the said intended Highway shall be situate ; and the question as to the utility as aforesaid of such Highway shall be determined at the discretion of such Justices.

24. The Surveyor of every Parish, other than a Parish the whole or part of which is within 3 miles of the General Post Office in the City of London, shall, with the consent of the inhabitants of any Parish in Vestry assembled, or by the direction of the Justices at a Special Sessions for the Highways, cause (where there are no such stones or posts) to be erected or fixed in the most convenient place where 2 or more ways meet, a stone or post, with inscriptions thereon in large legible letters, not less than one inch in height and of a proper and proportionate breadth, containing the name of the next market town, village, or other place to which the said Highways respectively lead, as well as stones or posts to mark the boundaries of the Highway, containing the name of the parish wherein situate ;

Direction Posts, and how to be erected.

And that the Surveyor of every Parish shall at the several approaches or entrances to such parts of any Highways as are subject to deep or dangerous floods, cause to be erected graduated stones or posts as he shall judge to be necessary for the guiding of travellers in the best and safest tract through the floods, and also to secure horse causeways and foot causeways, by posts, blocks, or stones fixed in the ground, or by banks of earth cast up or otherwise, from being passed over and spoiled by waggons, wains, carts, or carriages ;

And the said Surveyor shall be reimbursed, out of the monies which shall be received by him pursuant to the directions of this Act, the expenses of providing and erecting and of keeping in repair such stones, posts, or blocks already erected or fixed, or which may hereafter be erected or fixed.

25. It shall be lawful for the Surveyor to make a road through the grounds adjoining to any ruinous or narrow part of any Highway (not being the site or ground whereon any house stands, nor being a garden, lawn, yard, court, park, paddock, plantation, planted walk or avenue to any house or inclosed ground set apart for building ground or as a nursery for trees), to be made use of, as a public Highway whilst the old road is repairing or widening, making such recompense to the proprietor and occupier of such grounds for the damages they may thereby sustain as the Justices at a Special Sessions for the Highways assembled may think reasonable, such sum so awarded as a recompense to be recoverable in the same manner as any fines and forfeitures are recoverable under this Act.

Power to use adjoining ground as a temporary road.

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[5 & 6 WILL. IV.]

Highways.

[C. 50.]

A.D. 1834.

Surveyor to remove snow, &c.

26. If any impediment or obstruction shall arise in any Highways from accumulation of snow or from the falling down of the banks on the side of such Highways, or from any other cause, the Surveyor is required from time to time and within 24 hours after notice thereof from any Justice of the Peace of the County in which the Parish may be situate, to cause the same to be removed.

Surveyor to make Rate.

27. And in order to raise money for carrying the several purposes of this Act into execution, be it further enacted, that a Rate shall be made, assessed, and levied by the Surveyor upon all property now liable to be rated and assessed to the Relief of the Poor;

Provided that the same Rate shall also extend to such woods, mines, and quarries of stone, or other hereditaments, as have heretofore been usually rated to the Highways;

And provided also, that every such Rate shall be signed by the said Surveyor, and allowed by 2 Justices of the Peace, and published in the same way as Poor Rates are now allowed and published.

Rate to be allowed by Justices.

Surveyor may inspect Rate Book, and obtain copies or extracts.

28. And in order to enable the Surveyor to form a proper judgment of any Rate to be made in pursuance of this Act, be it further enacted, That it shall be lawful for the Surveyor, and he is hereby authorised and empowered, at all reasonable times, to inspect, or by writing signed by him to grant authority to any person appointed by him to inspect, any of the Rates made towards the Relief of the Poor of the Parish of which he is Surveyor, or the books wherein the assessments thereto shall be entered, without fee or reward;

And the Surveyor or person by him authorised as aforesaid shall be allowed to make a copy of such Rate or books, or to take any extracts therefrom;

And if any person in whose custody or power any of the said Rates or books shall be shall when thereunto required in manner aforesaid refuse or neglect to produce the same to the Surveyor or person so by him authorised as aforesaid, as the case may be, or to allow such copy or extract to be made or taken, at all reasonable hours in the daytime, he shall for every such offence forfeit and pay any sum not exceeding £5.

Form and amount of Rate.

29. Every Rate shall contain the names of the occupiers, the description of the premises or property they occupy, and the full annual value of such premises or property, and shall also specify the sum in the pound at which it is made;

And no Rate to be levied or assessed as aforesaid shall exceed at any one time the sum of 10d. in the pound or the sum of 2s. 6d. in the pound in the whole in any one year:

Provided nevertheless, that, with the consent of four-fifths of the inhabitants of any parish contributing to the Highway Rate assembled at a meeting specially called for that purpose, 10 days previous notice of the same having been given by the Surveyor of the said Parish, the Rate to be levied and assessed as aforesaid may be increased to such sum as the said inhabitants so assembled may think proper.

Surveyor to have power to enforce composition in certain Parishes.

30. In parishes in which the Overseers of the Poor have power by Local Acts of Parliament to compound with or require composition for Poor Rates, from the landlords of certain houses, tenements, or hereditaments, and in case of their refusal to compound to rate such landlords as the occupiers, the Surveyor shall have the same powers, remedies, and privileges to compound and enforce composition, and, in case of refusal by the landlords, to assess them in the same proportions to the Rates authorised to be made by this Act, as the Overseers of the Poor have by such Acts for assessing and recovering any Rate made for the Relief of the Poor, or the compositions entered into for the same.

Error in Rates may be rectified.

31. Whenever it shall appear to the said Surveyor as aforesaid that there has been any omission or error in any Rate or Assessment made in pursuance of this Act of or in the name of any person, parson, or vicar, or of any house, shop, warehouse, coach-house, stable, cellar, vault, building, workshop, manufactory, garden ground, land, tenement, wood, tithe, mines, pits, or quarries of any mineral, stone, or other matter whatsoever, or hereditament liable to be rated for the purposes of this Act, it shall be lawful for the said Surveyor as aforesaid, with the consent and approbation of the Justices at a Special Sessions for the Highways, to cause to be added or corrected in the said Rate or Assessment the name of the person, parson, or vicar omitted or erroneously stated, and a description of the property in respect of which he ought to be rated;

And every such addition or correction made in any of the said Rates, and signed by such Justices, shall be as valid and effectual as if the same had been part of the original Rate at the time when it was first made.

Persons may be excused payment of Highway Rate.

32. It shall and may be lawful for the Justices at a Special Sessions for the Highways, on application made to them by any person rated to any Rate under the authority of this Act to be discharged therefrom, on proof of his inability through poverty to pay such Rate, the Surveyor having been first summoned to appear on the part of the Parish, to order and direct that such person shall be excused from the payment of such Rate, and which order of the said Justices is hereby declared to be final with respect to such Rate.

Certain persons not liable to Highway Rate.

33. When property, or the owner or occupier in respect thereof, has, previous to the passing of this Act, been legally exempt from the performance of statute duty, or from the payment of any composition in lieu thereof, or of Highway Rate, the said property and the owners and occupiers thereof shall be exempt from the payment of the Rate hereby imposed.

Rates how to be recovered.

34. For levying and recovering the said Rate by this Act authorised to be made the Surveyor shall have the same powers, remedies, and privileges as the Overseers of the Poor in the Parish have by law for the recovery of any Rate made for the Relief of the Poor.

Ratepayers may divide among themselves the conveyance of stone, &c., for repair of Highways, which shall be paid for by Surveyor.

35. (a) It shall be lawful for 2 ratepayers of any Parish, within 6 days next after the annual appointment of the Surveyor, by a notice in writing, to require the said Surveyor to call a meeting of the ratepayers of the said Parish for the purpose hereafter mentioned, and the said Surveyor

(a) This section does not apply to any parish within a district formed under the "Highway Act, 1862." (25 & 26 Vict., 61, § 42).

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shall call such meeting within 8 days after the receipt of such notice, and shall give 6 days previous intimation of such meeting ;

And if at such meeting a majority of the ratepayers then and there assembled shall signify their consent thereto, it shall and may be lawful for the ratepayers keeping a team or teams of 2 or more horses or beasts of draught to divide among themselves, in proportion to the amount of Rate to which they may respectively be assessed, the carrying of the material which may be required by the said Surveyor for the repairs of the Highways within such Parish, and that they shall be paid by the said Surveyor for such carrying or task-work within one calendar month after having performed such service, after such rate per cubic yard of material per mile, and so in proportion for any less distance than a mile, as shall be fixed by the Justices at their first meeting in Special Sessions for the Highways after the 25th day of March in every year, which rate the said Justices are hereby required to fix at such Special Sessions :

Provided always, that such carrying or task-work shall be performed at such times and places and in such manner as the said Surveyor may direct (the periods of spring, seed-time, and harvest always excepted) ;

And that in case the said Surveyor shall not approve of the manner in which such carrying or task-work shall be performed, it shall be lawful for the Justices at a Special Sessions for the Highways to hear the complaint of such Surveyor in that respect, and to award such pecuniary redress or forfeiture against the party offending as to them shall appear reasonable.

36. The Surveyor of any Parish, the consent of the majority of the inhabitants in Vestry assembled being first had and obtained, may from time to time appoint any number of Collectors of the said Rates, and may remove any such Collector, and appoint another in his stead, and make such allowance to such Collector, out of the monies to be received under this Act, as the said inhabitants in Vestry assembled shall think reasonable ;

And the said Collector is hereby declared to have all the same powers, remedies, and privileges for the levying and enforcing the payment of such Rates as the Surveyor nominated or appointed under the authority of this Act.

37. It shall be lawful for the said Surveyor and he is hereby required to take security from every Collector appointed by virtue of this Act for the due execution of his office of Collector, which security shall be to the full amount of the sum likely to be in the hands of the said Collector at any one time, and shall be by bond without stamp.

38. Every Collector appointed by virtue of this Act shall under his hand, and at such time and in such manner as the Surveyor may direct, deliver to the said Surveyor as aforesaid true and perfect accounts in writing of all monies which shall have been by such Collector received by virtue of this Act, and also a list of the names of all such persons as shall have neglected or refused to pay their respective Rates, and of the monies due from them respectively ;

And that every such Collector shall pay all such monies as shall remain due from him to the said Surveyor as aforesaid ; and if any such Collector shall refuse or neglect to make and render such account, or to produce and deliver up the list of persons neglecting and refusing to pay their Rates as aforesaid, or to make payments as aforesaid, or shall refuse or wilfully neglect to deliver to the said Surveyor as aforesaid, or to such person as he shall appoint to receive the same, within 3 days after being thereunto required by the said Surveyor as aforesaid, by notice in writing under his hand given to or left at the usual place of abode of such Collector, all books, papers, and writings in his custody or power relating to the execution of this Act, or to give satisfaction to the said Surveyor as aforesaid respecting the same, then and in every such case, upon complaint made by the said Surveyor as aforesaid of any such refusal or wilful neglect as aforesaid to any Justice of the Peace, such Justice may and he is hereby authorised and required to issue a summons under his hand for the Collector so refusing or neglecting to appear before any 2 Justices of the Peace ;

And upon the said Collector appearing, or having been so summoned and not appearing, without some sufficient or reasonable excuse, or not being found, it shall be lawful for the said 2 Justices to hear and determine the matter ;

And if upon confession of the party, or by the testimony of any credible witness on oath, it shall appear to such Justices that any monies remain due from such Collector, such Justices may and they are hereby authorised and required, upon non-payment thereof, by warrant under their hands to cause such money to be levied by distress and sale of the goods and chattels of such Collector ;

And if no goods and chattels of such Collector shall be found sufficient to answer and satisfy the said money, and the charges of distraining and selling the said goods and chattels, then and in every such case such Justices shall and they are hereby required to commit such offender to the common gaol or house of correction for the County, City, or place where such offender shall be or reside, there to be kept to hard labour for a period not exceeding 6 calendar months, or until he shall have paid such monies as aforesaid or compounded with the Surveyor as aforesaid for such money (which composition the said Surveyor, with the consent of the inhabitants in Vestry, or, in any Parish where they do not meet in Vestry, with the consent of the inhabitants contributing to the Highway Rate, at a public meeting assembled, is hereby empowered to make and receive) ;

Or if it shall appear to such Justices that such Collector had refused or wilfully neglected to render and give such accounts, or to produce and deliver the list of persons neglecting and refusing to pay their Rates as aforesaid, or that any books, papers, or writings relating to the execution of this Act remained in the hands or in the custody or power of such Collector, and he refused or wilfully neglected to deliver or give satisfaction respecting the same as aforesaid then and in every such case such Collector shall, on conviction thereof, forfeit for such offence any sum not exceeding £20, and in default of payment thereof shall be committed to the common gaol or House of Correction for the County, City, or place where such offender shall be or reside, there to

Surveyor with consent of Vestry may appoint Collector of Rates.

Security to be taken from Collector.

Collector to make out Accounts of all Monies received under this Act, &c.

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Separate Accounts to be kept.

Surveyor to keep Accounts of Monies received, &c. to be open to inspection of rated inhabitants.

The property in all books, &c., to be vested in Surveyor for the time being.

Surveyor on quitting office, to deliver Books &c., to succeeding Surveyor.

Penalty for neglect.

In case of death of Surveyor, Executors to account.

Yearly accounts to be laid by Surveyors, &c., before Justices at a Special Sessions for Highways.

be kept to hard labour for a period not exceeding 4 calendar months, or until he shall have given a true and perfect account as aforesaid, and delivered such list as aforesaid, and delivered up such books, papers, and writings, or give satisfaction in respect thereof to the said Surveyor :

Provided always, that no conviction or imprisonment of such Collector as aforesaid shall exonerate or discharge any security taken from him on his appointment as aforesaid.

39.(a) The Surveyor in every Parish shall keep separate and distinct accounts of the monies levied for the Highway Rate ;

And such accounts shall specify the different sums and the times when and the persons to whom and by whom the same shall have been collected and paid.

40.(b) The said Surveyor, District Surveyor, or Assistant Surveyor, as the case may be, shall and he is hereby required from time to time to keep a book, in which shall be entered a just and true and particular account of all money which shall have come to his hands as Surveyor, District Surveyor, or Assistant Surveyor of the Parish for the purposes of this Act, and to whom, and on what occasion, and for what work, and in what place, and on what day he shall have paid or applied the same, and also on account of all tools, materials, implements, and other things provided by him for the repair of the said Highways ;

And such book shall at all reasonable times be open to the inspection of every inhabitant rated to the Highway Rate of the Parish, or of any of the Parishes united into a district, without fee or reward, and every such inhabitant may take copies or extracts from the said book, or any part thereof, without paying for the same ;

And in case the said Surveyor, District Surveyor, or Assistant Surveyor shall neglect to provide such book, or to enter therein every sum received or paid by him within one week after the same shall have been received or paid, or shall refuse to permit or shall not permit any such inhabitant as aforesaid at any reasonable time to inspect the same, or take copies or extracts, as aforesaid, such Surveyor, District Surveyor, or Assistant Surveyor shall forfeit and pay any sum not exceeding £5 for each default, to be levied and applied in manner herein provided.

41. All the said books, papers, writings, and accounts, and all materials, tools, and implements, which shall be provided in pursuance of this Act, for repairing or preserving the Highways, and also the scrapings of the said Highways, shall be vested in the Surveyor for the time being ;

Or in case a District Surveyor shall be appointed, then all such books, papers, writings, and accounts, and all materials, tools, implements, and scrapings, shall be invested [*sic*] in the District Surveyor.

42. The said Surveyor, District Surveyor, or Assistant Surveyor shall, within 14 days after leaving his office, deliver such books and accounts, verified as herein directed, together with all such sums of money, as shall be due from him, and likewise all tools, materials, implements, and other things as aforesaid, to his successor in office, or retain the same in his hands, and account for them in his next account, if he shall be continued Surveyor or District Surveyor of such Parish in the succeeding year ;

And in case such Surveyor or District Surveyor shall neglect to deliver within such time as aforesaid the said books, papers, writings, and accounts, and such tools, materials, implements, and other things, in manner aforesaid, he shall for every such offence forfeit any sum not exceeding £5 ;

And in case he shall make default in the paying or accounting for the money so due from him within the time and according to the directions aforesaid he shall forfeit double the money so due.

43.(c) In case of the death of any such Surveyor, District Surveyor, or Assistant Surveyor before he shall have paid and fully satisfied all the monies which he shall have received by virtue of this Act, then and in every such case the Executors or Administrators of such Surveyor, District Surveyor, or Assistant Surveyor so dying shall pay and satisfy the same, out of his estate and effects, unto the succeeding Surveyor, District Surveyor, or Assistant Surveyor, in like manner as other debts are directed by Law to be discharged by such Executors or Administrators, and also shall deliver up all books, papers, writings, assessments, tools, materials, and implements, and other things concerning his office, which shall have come to the hands of such Executors or Administrators who shall and may plead such payment in any Action or Suit which may be brought against them on account of the said estate and effects, and give the same in evidence ;

And in case of the non-payment of such monies, or the non-delivery of such books, papers, writings, assessments, tools, materials, implements, and things, for the space of one calendar month after demand made thereof in writing by or on behalf of the said succeeding Surveyor, it shall be lawful for the said succeeding Surveyor to commence and prosecute an Action or Actions in any of His Majesty's Courts of Record at Westminster against such Executors or Administrators, for the recovery of the said monies or for the recovery of damages for the detention of such books, papers, writings, assessments, tools, materials, implements, and things, in which Action or Actions full costs of suit shall be recovered by the said succeeding Surveyor.

44.(d) Within 14 days after the election or appointment of Surveyor as herein directed, the accounts as aforesaid made in writing, and signed by the Surveyor, District Surveyor, or Assistant Surveyor, for the year preceding, of all monies received and disbursed by virtue of this Act, ending on the day of the election or appointment of Surveyor, shall be made up, balanced, and laid before the parishioners in Vestry assembled, who may if they think fit order an abstract thereof to be printed and published ;

And within one calendar month after the election or appointment of Surveyor, as herein directed, the said accounts shall be signed by the Surveyor, District Surveyor, or Assistant

(a) This section does not apply to a Highway Board formed under the " Highway Act, 1862." (25 & 26 Vict., 61, § 42).

(b) See note to § 39, *ante*.

(c) See note to § 39, *ante*.

(d) See note to § 39, *ante*.

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Surveyor for the year preceeding, and laid before the Justices of the Peace at a Special Sessions for the Highways holden at the place nearest to the Parish or district for which such Surveyor shall have been appointed, and such Justices are hereby authorised and required to examine him as to the truth of the said accounts, or of any charge contained therein :

Provided always, that if any person chargeable to the Rate authorised to be made by this Act has any complaint against such accounts, or the application of the monies received by the said Surveyor, it shall be lawful for any such inhabitant to make his complaint thereof to such Justices at the time of the verification of such accounts as aforesaid, and the said Justices are hereby required to hear such complaint, and, if they shall think fit, to examine such Surveyor upon oath, and to make such order thereon as to them shall seem meet

Subject of appeal.

45.(a) It shall and may be lawful for the Justices of the Peace within their respective divisions, or any 2 or more of them, and they are hereby required, to hold not less than 8 nor more than 12 Special Sessions in every year for executing the purposes of this Act, the days of the holding thereof to be appointed at a Special Sessions to be held within 14 days after the 20th day of March in every year :

Justices to hold Special Sessions for purposes of this Act.

Provided always, that it shall not be necessary to cause any notice to be given or sent to any Justice acting and residing within such limits of the day or time of the holding thereof ;

And at the said Special Sessions held next after the 25th day of March in every year the Surveyor of each of the Parishes within their respective divisions shall verify his accounts, and shall make a return in writing to such Special Sessions of the state of all the roads, common Highways, bridges, causeways, hedges, ditches, and watercourses appertaining thereto, and of all nuisances and encroachments, if any, made upon the several Highways within the Parish for which he was Surveyor, as well as the extent of the different Highways which the said Parish is liable to repair, what part thereof has been repaired, and with what materials, at what expense, and what was the amount levied during the time he was Surveyor of the said Parish.

At such Sessions Surveyor to verify his Accounts, and make returns as to the Roads, &c.

46.(b) In every Parish the Surveyor may and is hereby authorised, with the consent of the inhabitants in vestry assembled, to contract for purchasing, getting, and carrying the materials required for the repair of the Highway ;

Surveyor may contract for materials, but not to share in Contracts, or let teams, or dispose of timber, stones &c., without license from Justices.

And if any Surveyor shall have any part, share, or interest, directly or indirectly, in any contract or bargain for work or materials to be made, done, or provided upon, for, or on account of any of the Highway or other works whatsoever under his care or management, or shall upon his own account, directly or indirectly, use or let to hire any team, or use or sell or dispose of any materials to be used or employed in making or repairing such Highway or other works as aforesaid, (unless a license in writing for the sale of any such materials, or to let to hire any such team, be first obtained from 2 Justices of the Peace in Special Sessions assembled), he shall forfeit for every such offence, on conviction, any sum not exceeding £10, and be for ever after incapable of being employed as a Surveyor with a salary under the authority of this Act.

Penalty.

47. If any person shall, without the consent of the Surveyor, take away materials which shall have been purchased, gotten, dug, or gathered for the repair or use of any Highway, or any materials out of any quarry which shall have been made, dug, or opened for the purpose of getting materials for any Highway, before the Surveyor and his workmen shall have discontinued working therein for the space of 6 weeks (except the owner of any private grounds, and persons authorised by such owner to get materials in such quarry for his own private use, and not for sale), every person so offending shall for every such offence forfeit and pay, on conviction thereof, any sum not exceeding £10.

Penalty for taking away Materials belonging to Surveyor.

48. And whereas, under Acts of Parliament heretofore made and which may hereafter be made for the inclosing of waste land, parcels of land have been and may be expressly allotted to Parishes or to the Surveyor of the Highways for the purpose of obtaining materials for the repair of the Highways in such Parish, and the materials in such parcels of land have been and may be exhausted :

Land allotted to the Parish for Materials when exhausted may be sold.

In such cases it shall and may be lawful for the Surveyor of such Parish for the time being, by and with the consent of the Vestry, and he is hereby authorised and required, with the consent in writing of the Justices of the Peace at a Special Sessions for the Highways, to sell and convey to some person whose lands adjoin thereto, or, if he refuse to purchase, to any other person, the said parcels of land from which the said materials have been so exhausted as aforesaid, at and for such price as the said Justices may deem fair and reasonable, and with the money arising therefrom, and with such consent as aforesaid, to purchase other lands in lieu thereof.

49. It shall be in the power of tenants for life, Ecclesiastical and Lay Corporations, and the proprietors of entailed estates, and of the Trustees and Guardians of any person under any legal disability or incapacity, to give up and renounce every claim of damage or compensation for such ground and materials as any Highway may occupy on their respective properties, and that such renunciation shall be equally binding on the heirs and successors of such persons :

Tenant for life, &c., may renounce damages

Provided nevertheless, that such renunciation of claim of damage or compensation be in writing, and signed by such tenant for life, proprietor, Trustee, or Guardian, in the presence of 2 witnesses, or in the case of Corporations in such manner and form as is usually adopted by such Corporations respectively ;

And such renunciation shall be enrolled at the Quarter Sessions which shall be held next after the signing or execution thereof.

50. When any lands or tenements have been or shall be given for maintenance of Highways, the profits and proceeds of which are to be applied and disposed of for no other use, intent, or purpose whatsoever, all persons who are or shall be enfeoffed or trusted with any such lands or

Persons enfeoffed with Lands for maintenance of Highways, &c., shall let them at most improved value, with consent of Justices.

(a) See note to § 39, *ante*.

(b) This section does not apply to Highway

Boards or Parishes within Highway Districts. (27 & 28 Vict., 101, § 20).

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tenements shall and they are hereby authorised and required to let them to farm at the most improved yearly value, without fine, for any term not exceeding 99 years :

Provided nevertheless, that previous to the granting of such lease the consent of the Justices at a Special Sessions for the Highways, neither of such Justices being interested therein, by writing under their hands, shall be obtained as to the amount of rent to be received and the duration of the term.

Materials where and in what manner to be taken by Surveyor.

51. It shall and may be lawful for every such Surveyor, in any waste land or common ground, river or brook, within the Parish for which he shall be Surveyor, or within any other Parish wherein gravel, sand, stone, or other materials are respectively likely to be found (in case sufficient cannot be conveniently had within the Parish where the same are to be employed, and sufficient shall be left for the use of the roads in such other Parish), to search for, dig, get, and carry away the same, so that the said Surveyor doth not thereby divert or interrupt the course of such river or brook, or prejudice or damage any building, Highway, or ford, nor dig or get the same out of any river or brook within the distance of 150 feet above or below any bridge, nor within the like distance of any dam or weir ;

Power to gather stones without making satisfaction, but satisfaction to be made for damage done by removing them.

And likewise to gather stones lying upon any lands or grounds within the Parish where such Highway shall be, for such service and purpose, and to take and carry away so much of the said materials as by the discretion of the said Surveyor shall be thought necessary to be employed in the amendment of the said Highways, without making any satisfaction for the said materials, but satisfaction shall be made for all damages done to the lands or grounds of any person or persons by carrying away the same, in the manner herein-after directed for getting and carrying materials in inclosed lands or grounds ;

But no such stones shall be gathered without the consent of the owner of such lands or grounds, or a license for that purpose from 2 Justices at a Special Sessions for the Highways, after having summoned such owner to come before him and hear his reasons, if he shall appear and give any, for refusing his consent.

Not to extend to sea beach, &c.

52. Nothing in this Act contained relative to the gathering or getting of stones or other materials shall extend to any quantity of stones or other materials thrown up by the sea commonly called beach, where the removal of the same would cause any damage or injury by inundation to the lands adjoining, or increased danger of encroachment by the sea.

Notice to be given before materials are taken from private Lands.

53. It shall not be lawful for any Surveyor, or any other person acting under the authority of this Act, to dig, gather, get, take, or carry away any materials for making or repairing any Highway out of or from any inclosed land or ground until one calendar month's notice in writing, signed by the Surveyor, shall have been given to the owner of the premises from which such materials are intended to be taken, or to his known agent, and to the occupier of the premises from which such materials are intended to be taken, or left at the house or last or usual place of abode of such owner or agent, and also of such occupier, to appear before the Justices at a Special Sessions for the Highways, to show cause why such materials shall not be had therefrom ;

If occupier shows cause against the removal, Justices shall decide.

And in case such owner, agent, or occupier shall attend pursuant to such notice, but shall not show sufficient cause to the contrary, such Justices shall, if they think proper, authorise such Surveyor or other person to dig, get, gather, take, and carry away such materials at such time or times as to such Justices shall seem proper ;

And if such owner, agent, or occupier shall neglect or refuse to appear by himself or his agent, the said Justices shall and may (upon proof on oath of the service of such notice) make such order therein as they shall think fit, as fully and effectually to all intents and purposes as if such owner or occupier, or his agent, had attended.

If Materials cannot be found in waste lands, &c., Surveyor may take them from inclosed lands making satisfaction.

54. It shall be lawful for every such Surveyor, for the use aforesaid, by license in writing from the Justices at a Special Sessions for the Highways, to search for, dig, and get materials, if sufficient cannot be had conveniently within such waste lands, common grounds, rivers, or brooks, in or through any of the several or inclosed lands or grounds of any person whosoever (such lands or grounds not being a garden, yard, avenue to a house, lawn, park, paddock, or inclosed plantation, or inclosed wood not exceeding 100 acres in extent), within the Parish where the same shall be wanted, or within any other Parish adjoining or lying near to the Highway for which such materials shall be required, if it shall appear to such Justices that sufficient materials cannot be conveniently had in the Parish where such Highways lie, or in the waste lands, or common grounds, rivers, or brooks of such adjacent Parish, and that a sufficient quantity of materials will be left for the use of the Parish where the same shall be, and to take and carry away so much of the said materials as by the discretion of the said Surveyor shall be thought necessary to be employed in the amendment of the said Highways, the said Surveyor making such satisfaction for the materials which may be got or taken away, and also for the damage done to such lands or grounds by the getting and carrying away the same, as shall be settled and ascertained by order of the Justices at a Special Sessions for the Highways.

If Surveyor shall make holes in getting materials, he shall cause them to be filled up or protected.

55. If any Surveyor or person employed by him shall, by reason of the searching for, digging, or getting any materials for repairing any Highways, make any pit or hole in lands, common grounds, rivers, or brooks as aforesaid wherein such materials shall be found, he shall forthwith cause the same to be sufficiently fenced off, and such fence supported and repaired during such time as the said pit or hole shall continue open, and within 3 days after such pit or hole shall be opened or made, where no materials shall be found, cause the same to be forthwith filled up, levelled, and covered with the turf or clod which was dug out of the same, and where any such materials shall be found, within 14 days after having dug up sufficient materials in such pit or hole, cause the same to be filled up or sloped down and fenced off, if required by the owner of the land or ground, and so continued ;

And in like manner all those already made.

And every Surveyor shall, within 21 days after he shall have been appointed to that office, cause all the said pits and holes which shall then be open and not likely to be further useful to be filled up or sloped down in manner aforesaid, and if they are likely to be further useful he

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shall secure the same by posts and rails or other fences to prevent accidents to persons or cattle ;

And in case such Surveyor or person shall neglect to fill up, slope down, or fence off such pit or hole in manner and within the time aforesaid, he shall forfeit the sum of 10s. for every such default ;

Penalties for neglect herein.

And in case such Surveyor or person shall neglect to fence off such pit or hole, or to slope down the same, as herein-before directed, for the space of 6 days after he shall have received notice for either of those purposes from any Justice of the Peace, or from the owner or occupier of such several ground, river, or brook, or any person having right of common within such common or waste lands as aforesaid, and such neglect and notice shall be proved upon oath before the Justices at a Special Sessions for the Highways, such Surveyor, person or persons, shall forfeit and pay any sum not exceeding £10 for such neglect, to be determined and adjudged by such Justices, and to be laid out and applied in the fencing off, filling up, or sloping down such pit or hole, and toward the repair of the roads in the Parish where the offence shall be committed, in such manner as the said Justices shall direct and appoint ; which forfeiture, in case the same be not forthwith paid, shall be levied as other forfeitures are herein-after directed to be levied.

56. If any Surveyor or District Surveyor shall lay or cause to be laid any heap of stone or any other matter or thing whatsoever upon any Highway, and allow the same to remain there at night to the danger or personal damage of any person passing thereon, all due and reasonable precaution not having been taken by the said Surveyor to guard against the same, he shall forfeit for every such offence any sum not exceeding £5.

Penalty on Surveyor allowing any heaps to remain on Highway at night.

57. If any Surveyor shall dig or cause to be dug materials for the Highways, whereby any bridge, mill, building, dam, Highway, occupation road, ford, mines, or tin works, or other work may be damaged or endangered, he shall forfeit for every such offence, on conviction, any sum not exceeding £5, at the discretion of the Justices before whom the complaint thereof shall be made, notwithstanding his liability to any civil action to which he may make himself liable by such act.

Penalty on Surveyor damaging mill, &c., by digging materials.

58. And whereas it frequently happens that the boundaries of Parishes pass across or through the middle of a common Highway, and one side of such Highway is situated in one Parish and the other side in another Parish, whereby great inconveniences often arise in repairing the same : The Justices at a Special Sessions for the Highways, on complaint of any Surveyor of any Parish (stating in writing, and on a plan thereunto annexed, that there is such a Highway one side whereof ought to be repaired by one Parish and the other side by another, and particularly describing the same by metes, bounds, and admeasurement thereof), may issue their summons, with a copy of such writing and plan thereunto annexed, to the Surveyor of such other Parish, to appear before them on a day mentioned in such summons ;

Where a Highway lies in 2 Parishes, Justices to determine what parts shall be repaired by each.

And if the parties appear such Justices may then proceed finally to decide the matter, in manner herein mentioned in case all the parties shall consent thereto ;

But in case the Surveyor summoned shall not appear on such first summons, or appearing shall require further time, such Justices shall adjourn the further consideration of the matter for any further time, not more than 21 days nor less than 14 days from the date of such adjournment, of which the Surveyor not appearing, or appearing shall require further time, shall have notice, on which day the said Justices shall proceed to hear the parties and their witnesses, and, whether the party summoned does or does not appear, shall proceed to examine and finally determine the matter in form following ; (that is to say),

That it shall and may be lawful for such Justices and they are hereby required to divide the whole of such common Highway, by a transverse line crossing such Highway, into equal parts, or into such unequal parts and proportions as, in consideration of the soil, waters, floods and inequality of such Highway, or any other circumstances attending the same, they in their discretion shall think just and right, and to declare, adjudge, and order that the whole of such Highway on both sides thereof in any of such parts shall be maintained and repaired by one of such Parishes, and that the whole thereof on both sides in the other of such parts shall be maintained and repaired by the other of such Parishes, and shall cause such their order, and a plan of such Highway, and the allotment thereof, as before mentioned, to be fairly delineated on paper or parchment, and filed with the Clerk of the Peace of the County in which such Highway shall happen to lie, and shall also cause such posts, stones, or other boundaries to be placed and set up in such Highway as in their judgment shall be necessary for ascertaining the division and allotment thereof :

Provided nevertheless, that in the case of any such last-mentioned Highway the repair of any part of which belongs to any Body Politic or Corporate, or to any person by the reason of tenure of any lands or otherwise howsoever, the same proceedings may be adopted, but the said Body Politic or Corporate, or person, or some one on their behalf, may appear before such Justices, and object to such last-mentioned proceedings, in which case the said Justices shall, before they divide such Highway as aforesaid, hear and consider the objection so made, and determine the same.

Proviso in case of Highways repaired by party ratione tenuræ, &c.

59. From and after such order and plan shall be so filed with the Clerk of the Peace as aforesaid, such Parishes, and Body Politic or Corporate, or person aforesaid respectively, shall be bound as of common right to maintain and keep in repair such parts of such Highways so allotted to them as aforesaid, and shall be liable to be proceeded against for neglect of such duty, and shall in all respects whatsoever be liable and subject to all the provisions, regulations, and penalties contained in this Act, and also shall be discharged from the repair of such part of such Highway as shall not be included in their respective allotment.

Parishes, &c., bound to repair the part so allotted.

60. All costs, charges, and expenses to be incurred by reason of any of the proceedings last-mentioned shall be borne and defrayed by such 2 Parishes or Body Politic or Corporate, or person aforesaid, the same being settled and ascertained and duly apportioned between such Parishes by such Justices ;

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tenements shall and they are hereby authorised and required to let them to farm at the most improved yearly value, without fine, for any term not exceeding 99 years :

Provided nevertheless, that previous to the granting of such lease the consent of the Justices at a Special Sessions for the Highways, neither of such Justices being interested therein, by writing under their hands, shall be obtained as to the amount of rent to be received and the duration of the term.

Materials where and in what manner to be taken by Surveyor.

51. It shall and may be lawful for every such Surveyor, in any waste land or common ground, river or brook, within the Parish for which he shall be Surveyor, or within any other Parish wherein gravel, sand, stone, or other materials are respectively likely to be found (in case sufficient cannot be conveniently had within the Parish where the same are to be employed, and sufficient shall be left for the use of the roads in such other Parish), to search for, dig, get, and carry away the same, so that the said Surveyor doth not thereby divert or interrupt the course of such river or brook, or prejudice or damage any building, Highway, or ford, nor dig or get the same out of any river or brook within the distance of 150 feet above or below any bridge, nor within the like distance of any dam or weir ;

Power to gather stones without making satisfaction, but satisfaction to be made for damage done by removing them.

And likewise to gather stones lying upon any lands or grounds within the Parish where such Highway shall be, for such service and purpose, and to take and carry away so much of the said materials as by the discretion of the said Surveyor shall be thought necessary to be employed in the amendment of the said Highways, without making any satisfaction for the said materials, but satisfaction shall be made for all damages done to the lands or grounds of any person or persons by carrying away the same, in the manner herein-after directed for getting and carrying materials in inclosed lands or grounds ;

But no such stones shall be gathered without the consent of the owner of such lands or grounds, or a license for that purpose from 2 Justices at a Special Sessions for the Highways, after having summoned such owner to come before him and hear his reasons, if he shall appear and give any, for refusing his consent.

Not to extend to sea beach, &c.

52. Nothing in this Act contained relative to the gathering or getting of stones or other materials shall extend to any quantity of stones or other materials thrown up by the sea commonly called beach, where the removal of the same would cause any damage or injury by inundation to the lands adjoining, or increased danger of encroachment by the sea.

Notice to be given before materials are taken from private Lands.

53. It shall not be lawful for any Surveyor, or any other person acting under the authority of this Act, to dig, gather, get, take, or carry away any materials for making or repairing any Highway out of or from any inclosed land or ground until one calendar month's notice in writing, signed by the Surveyor, shall have been given to the owner of the premises from which such materials are intended to be taken, or to his known agent, and to the occupier of the premises from which such materials are intended to be taken, or left at the house or last or usual place of abode of such owner or agent, and also of such occupier, to appear before the Justices at a Special Sessions for the Highways, to show cause why such materials shall not be had therefrom ;

If occupier shows cause against the removal, Justices shall decide.

And in case such owner, agent, or occupier shall attend pursuant to such notice, but shall not show sufficient cause to the contrary, such Justices shall, if they think proper, authorise such Surveyor or other person to dig, get, gather, take, and carry away such materials at such time or times as to such Justices shall seem proper ;

And if such owner, agent, or occupier shall neglect or refuse to appear by himself or his agent, the said Justices shall and may (upon proof on oath of the service of such notice) make such order therein as they shall think fit, as fully and effectually to all intents and purposes as if such owner or occupier, or his agent, had attended.

If Materials cannot be found in waste lands, &c., Surveyor may take them from inclosed lands making satisfaction.

54. It shall be lawful for every such Surveyor, for the use aforesaid, by license in writing from the Justices at a Special Sessions for the Highways, to search for, dig, and get materials, if sufficient cannot be had conveniently within such waste lands, common grounds, rivers, or brooks, in or through any of the several or inclosed lands or grounds of any person whomsoever (such lands or grounds not being a garden, yard, avenue to a house, lawn, park, paddock, or inclosed plantation, or inclosed wood not exceeding 100 acres in extent), within the Parish where the same shall be wanted, or within any other Parish adjoining or lying near to the Highway for which such materials shall be required, if it shall appear to such Justices that sufficient materials cannot be conveniently had in the Parish where such Highways lie, or in the waste lands, or common grounds, rivers, or brooks of such adjacent Parish, and that a sufficient quantity of materials will be left for the use of the Parish where the same shall be, and to take and carry away so much of the said materials as by the discretion of the said Surveyor shall be thought necessary to be employed in the amendment of the said Highways, the said Surveyor making such satisfaction for the materials which may be got or taken away, and also for the damage done to such lands or grounds by the getting and carrying away the same, as shall be settled and ascertained by order of the Justices at a Special Sessions for the Highways.

If Surveyor shall make holes in getting materials, he shall cause them to be filled up or protected.

55. If any Surveyor or person employed by him shall, by reason of the searching for, digging, or getting any materials for repairing any Highways, make any pit or hole in lands, common grounds, rivers, or brooks as aforesaid wherein such materials shall be found, he shall forthwith cause the same to be sufficiently fenced off, and such fence supported and repaired during such time as the said pit or hole shall continue open, and within 3 days after such pit or hole shall be opened or made, where no materials shall be found, cause the same to be forthwith filled up, levelled, and covered with the turf or clod which was dug out of the same, and where any such materials shall be found, within 14 days after having dug up sufficient materials in such pit or hole, cause the same to be filled up or sloped down and fenced off, if required by the owner of the land or ground, and so continued ;

And in like manner all those already made.

And every Surveyor shall, within 21 days after he shall have been appointed to that office, cause all the said pits and holes which shall then be open and not likely to be further useful to be filled up or sloped down in manner aforesaid, and if they are likely to be further useful he

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shall secure the same by posts and rails or other fences to prevent accidents to persons or cattle ;

And in case such Surveyor or person shall neglect to fill up, slope down, or fence off such pit or hole in manner and within the time aforesaid, he shall forfeit the sum of 10s. for every such default ;

Penalties for neglect herein.

And in case such Surveyor or person shall neglect to fence off such pit or hole, or to slope down the same, as herein-before directed, for the space of 6 days after he shall have received notice for either of those purposes from any Justice of the Peace, or from the owner or occupier of such several ground, river, or brook, or any person having right of common within such common or waste lands as aforesaid, and such neglect and notice shall be proved upon oath before the Justices at a Special Sessions for the Highways, such Surveyor, person or persons, shall forfeit and pay any sum not exceeding £10 for such neglect, to be determined and adjudged by such Justices, and to be laid out and applied in the fencing off, filling up, or sloping down such pit or hole, and toward the repair of the roads in the Parish where the offence shall be committed, in such manner as the said Justices shall direct and appoint ; which forfeiture, in case the same be not forthwith paid, shall be levied as other forfeitures are herein-after directed to be levied.

56. If any Surveyor or District Surveyor shall lay or cause to be laid any heap of stone or any other matter or thing whatsoever upon any Highway, and allow the same to remain there at night to the danger or personal damage of any person passing thereon, all due and reasonable precaution not having been taken by the said Surveyor to guard against the same, he shall forfeit for every such offence any sum not exceeding £5.

Penalty on Surveyor allowing any heaps to remain on Highway at night.

57. If any Surveyor shall dig or cause to be dug materials for the Highways, whereby any bridge, mill, building, dam, Highway, occupation road, ford, mines, or tin works, or other work may be damaged or endangered, he shall forfeit for every such offence, on conviction, any sum not exceeding £5, at the discretion of the Justices before whom the complaint thereof shall be made, notwithstanding his liability to any civil action to which he may make himself liable by such act.

Penalty on Surveyor damaging mill, &c., by digging materials.

58. And whereas it frequently happens that the boundaries of Parishes pass across or through the middle of a common Highway, and one side of such Highway is situated in one Parish and the other side in another Parish, whereby great inconveniences often arise in repairing the same : The Justices at a Special Sessions for the Highways, on complaint of any Surveyor of any Parish (stating in writing, and on a plan thereunto annexed, that there is such a Highway one side whereof ought to be repaired by one Parish and the other side by another, and particularly describing the same by metes, bounds, and admeasurement thereof), may issue their summons, with a copy of such writing and plan thereunto annexed, to the Surveyor of such other Parish, to appear before them on a day mentioned in such summons ;

Where a Highway lies in 2 Parishes, Justices to determine what parts shall be repaired by each.

And if the parties appear such Justices may then proceed finally to decide the matter, in manner herein mentioned in case all the parties shall consent thereto ;

But in case the Surveyor summoned shall not appear on such first summons, or appearing shall require further time, such Justices shall adjourn the further consideration of the matter for any further time, not more than 21 days nor less than 14 days from the date of such adjournment, of which the Surveyor not appearing, or appearing shall require further time, shall have notice, on which day the said Justices shall proceed to hear the parties and their witnesses, and, whether the party summoned does or does not appear, shall proceed to examine and finally determine the matter in form following ; (that is to say),

That it shall and may be lawful for such Justices and they are hereby required to divide the whole of such common Highway, by a transverse line crossing such Highway, into equal parts, or into such unequal parts and proportions as, in consideration of the soil, waters, floods and inequality of such Highway, or any other circumstances attending the same, they in their discretion shall think just and right, and to declare, adjudge, and order that the whole of such Highway on both sides thereof in any of such parts shall be maintained and repaired by one of such Parishes, and that the whole thereof on both sides in the other of such parts shall be maintained and repaired by the other of such Parishes, and shall cause such their order, and a plan of such Highway, and the allotment thereof, as before mentioned, to be fairly delineated on paper or parchment, and filed with the Clerk of the Peace of the County in which such Highway shall happen to lie, and shall also cause such posts, stones, or other boundaries to be placed and set up in such Highway as in their judgment shall be necessary for ascertaining the division and allotment thereof :

Provided nevertheless, that in the case of any such last-mentioned Highway the repair of any part of which belongs to any Body Politic or Corporate, or to any person by the reason of tenure of any lands or otherwise howsoever, the same proceedings may be adopted, but the said Body Politic or Corporate, or person, or some one on their behalf, may appear before such Justices, and object to such last-mentioned proceedings, in which case the said Justices shall, before they divide such Highway as aforesaid, hear and consider the objection so made, and determine the same.

Proviso in case of Highways repaired by party ratione tenure, &c.

59. From and after such order and plan shall be so filed with the Clerk of the Peace as aforesaid, such Parishes, and Body Politic or Corporate, or person aforesaid respectively, shall be bound as of common right to maintain and keep in repair such parts of such Highways so allotted to them as aforesaid, and shall be liable to be proceeded against for neglect of such duty, and shall in all respects whatsoever be liable and subject to all the provisions, regulations, and penalties contained in this Act, and also shall be discharged from the repair of such part of such Highway as shall not be included in their respective allotment.

Parishes, &c., bound to repair the part so allotted.

60. All costs, charges, and expenses to be incurred by reason of any of the proceedings last-mentioned shall be borne and defrayed by such 2 Parishes or Body Politic or Corporate, or person aforesaid, the same being settled and ascertained and duly apportioned between such Parishes by such Justices ;

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Provisions as to
boundaries of
Counties, &c.

Highway re-
paired, *ratione*
tenure, &c., may
be made a Parish
Highway.

Centre of a
Highway.

No tree, &c., to
be planted with-
in 15 feet of
centre of car-
riageway.

Mode of pro-
ceeding if High-
way is prejudi-
ced by hedges,
&c.

And in case the said parties shall refuse or neglect to pay and discharge their respective share of such costs and expenses, it shall and may be lawful for the Justices at a Special Sessions for the Highways to levy the same by distress and sale, with costs of such distress, on the goods and chattels of any Surveyor of the Parish, or of any Body Politic or Corporate, or person aforesaid, so refusing or neglecting to defray such costs and charges as aforesaid.

61. Nothing herein contained shall extend or be construed to extend to affect, change, or alter in any manner whatsoever any boundaries of Counties, Lordships, Hundreds, Manors, or any other Division of public or private property, nor the boundaries of any Parishes or Townships, otherwise than for the purpose of amending and keeping in repair such particular portion of the Highway in the manner herein mentioned.

62. Any Body Politic or Corporate, or any person, liable to repair any Highway by reason of tenure of any lands or otherwise howsoever, or the Surveyor of the Parish in which the said Highway is situate, may, if he or either party shall think proper, having first obtained the consent of the inhabitants in Vestry assembled, apply to any Justice for the purpose of making the said Highway a Parish Highway, and to be repaired by the Surveyor of the said Parish ;

And the said Justice is hereby authorised and required to issue his summons, requiring the said Surveyor, or the party so liable to repair the said Highway as aforesaid, to appear before the Justices at the next Special Sessions for the Highways, and if both parties appear such Justices may then proceed to determine the matter ;

But in case the Surveyor or party summoned shall not appear on such first summons, or appearing shall require further time, such Justices shall adjourn the further consideration of the matter to the next Special Sessions for the Highways, of which the said Surveyor or party not appearing shall have notice, on which day the Justices so assembled at such Special Sessions shall proceed to hear the parties and their witnesses, and whether the Surveyor or party summoned do or do not appear, shall proceed to examine and determine the matter ;

And in case they decide that the said Highway shall become a Parish Highway, and be there- after repaired by the Surveyor of the said Parish, they shall, by an Order under their hands, fix the proportion of the expenses of repairing the said Highway to be annually paid by such Body Politic or Corporate or person as aforesaid to the Surveyor of the said Parish ;

And the Order of the said Justices shall be binding on the Surveyor and the said Parish and the said Body Politic or Corporate or person as aforesaid, their heirs, successors, and assigns :

Provided nevertheless, that the said Justices instead of fixing the proportion of the expenses of repairing the said Highway to be annually paid as aforesaid, may, by an Order under their hands, fix a certain sum to be paid by such Body Politic or Corporate or person as aforesaid to the Surveyor of the said Parish, in full discharge of all claims thereafter in respect of the repairs of such Highway ;

And in default of payment of such last-mentioned sum or of such annual sum as aforesaid the said Surveyor may proceed for the recovery thereof in the same manner as any penalties and forfeitures are recoverable under this Act :

Provided always, that when the sum so fixed to be paid in full discharge of all claims there- after in respect of the repair of such Highways shall exceed the sum of £100, the said sum when received shall be vested, in the name of the Minister, Churchwardens, and Surveyors of the Highways of the Parish within which such Highways shall be situate, in some Public Govern- ment securities, and the interest and dividends from time to time arising or accruing therefrom shall be applied towards the repairs of the Highways within the said Parish :

Provided also, that when the sums so fixed to be paid in full discharge of all claims as afore- said shall not exceed the sum of £100, the said last-mentioned sum, or any part thereof, on the application by and with the consent of the inhabitants of the Parish in Vestry assembled, and of the Justices in Special Sessions assembled, shall and may be paid to the Surveyor of the said Parish, to be applied towards the repair of the Highways within the said Parish.

63. Where in this Act any matter or thing is directed or forbidden to be done within a certain distance of the centre of the Highway that portion of ground shall be deemed and taken to be the Highway which has been maintained by the Surveyor as Highway, and repaired with stones or other materials used in forming Highways for the 6 months immediately preceding, and the centre of the Highway shall be the middle of such Highway, where, a line being drawn along the Highway or a point marked, an equal number of feet of Highway which have been so maintained and repaired as aforesaid for 12 months before shall be found on each side of such line or mark.

64. No tree, bush, or shrub shall hereafter be planted on any carriageway or cartway, or within the distance of 15 feet from the centre thereof, but the same shall respectively be cut down, grubbed up, and carried away by the owner or occupier of the land or soil within 21 days after notice to him or his agent by the Surveyor, on pain of forfeiting for every neglect the sum of 10s.

65. If the Surveyor shall think that any carriageway or cartway is prejudiced by the shade of any hedges, or by any trees (except those trees planted for ornament or for shelter to any hop ground, house, building, or court-yard of the owner thereof), growing in or near such hedges or other fences, and that the sun and wind are excluded from such Highway, to the damage thereof, or if any obstruction is caused in any carriageway or cartway by any hedge or tree, it shall be lawful for any one Justice of the Peace, on the application of the said Surveyor, to summon the owner of the land on which such hedges or trees are growing next adjoining to such carriageway or cartway to appear before the Justices at a Special Sessions for the Highways, to show cause why the said hedges are not cut, pruned, or plashed, or such trees not pruned or lopped, in such manner that the carriageway or cartway shall not be prejudiced by the shade thereof, and that the sun and wind may not be excluded from such carriageway or cartway to the damage thereof, or why the obstruction caused in such carriageway or cartway should not be removed ;

And the question as to the cutting, pruning, or plashing such hedges, or the pruning and lopping

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such trees, or the removal of such obstruction as aforesaid, shall, upon proof of the service of such summons, and whether the said owner attend or not, be determined at the discretion of such last-mentioned Justices ;

And if such Justices shall order and direct that such hedges shall be cut, pruned, or plashed, or such trees pruned or lopped, in manner aforesaid, or such obstruction removed, the said owner shall comply therewith within 10 days after a copy of such order shall have been left at the usual place of abode of the said owner, or of his steward or agent, and in default thereof shall forfeit, on conviction, a sum not exceeding 40s. ;

And the said Surveyor, if the order of the said Justices is not complied with, shall and he is hereby authorised and required to cut, prune, or plash such hedges, and to prune and lop such trees, for the benefit and improvement of the Highway, and to remove such obstruction as aforesaid to the best of his skill and judgment, and according to the true intent and meaning of this Act ;

And the said Surveyor shall be reimbursed by the owner as aforesaid what charges and expenses he shall be at in cutting, pruning, and plashing such hedges, and pruning and lopping such trees, and the removal of such obstruction, over and above the said forfeiture ;

And it shall and may be lawful for the Justices at a Special Sessions for the Highways, upon proof to them made upon oath, to levy as well the expenses of cutting, pruning, and plashing such hedges, or pruning and lopping such trees, or removal of such obstructions as aforesaid, as the several and respective penalties hereby imposed, by distress and sale of the offender's goods and chattels, in such manner as distresses and sales for forfeitures are authorised and directed to be levied by virtue of this Act.

66. No person shall be compelled nor any Surveyor permitted to cut or prune any hedge at any other time than between the last day of September and the last day of March ;

Time of cutting hedges and trees.

And that no person shall be obliged to fell any timber trees growing in hedges at any time whatsoever, except where the Highways shall be ordered to be widened or enlarged as herein mentioned, or then to cut down or grub up any oak trees growing in such Highway or in such hedges except in the months of April, May, or June, or any ash, elm, or other trees in any other months than December, January, February, or March.

67. The said Surveyor, District Surveyor, or Assistant Surveyor shall have power to make, scour, cleanse, and keep open all ditches, gutters, drains, or watercourses, and also to make and lay such trunks, tunnels, plates, or bridges as he shall deem necessary, in and through any lands or grounds adjoining or lying near to any Highway, upon paying the owner or occupier of such lands or grounds, provided they are not waste or common, for the damages which he shall sustain thereby, to be settled and paid in such manner as the damages for getting materials in inclosed lands or grounds are herein directed to be settled and paid.

Surveyor to keep open ditches, &c., and lay trunks, &c., through lands, adjoining Highway.

68. If any owner, occupier, or other person shall alter, obstruct, or in any manner interfere with any such ditches, gutters, drains, or watercourses, trunks, tunnels, plates, or bridges, after they shall have been made by or taken under the charge of such Surveyor or District Surveyor, and without his authority and consent, such owner, occupier, or other person shall be liable to reimburse all charges and expenses which may be occasioned by reinstating and making good the work so altered, obstructed, or interfered with, and shall also forfeit any sum not exceeding 3 times the amount of such charges and expenses.

Owner, occupier, &c., not to alter ditches without consent.

69. If any person shall encroach by making or causing to be made any building, hedge, ditch, or other fence on any carriageway or cartway within the distance of 15 feet from the centre thereof, every person so offending shall forfeit, on conviction for every such offence, any sum not exceeding 40s.

Penalty for encroaching on Highway.

And the Surveyor who hath the care of any such carriageway or cartway shall and he is hereby required to cause such building, hedge, ditch, or fence to be taken down, or filled up, at the expense of the person to whom the same shall belong ;

Encroachment to be removed.

And it shall and may be lawful for the Justices at a Special Sessions for the Highways, upon proof to them made upon oath, to levy as well the expenses of taking down such building, hedge, or fence, or filling up such ditch as aforesaid, as the several and respective penalties hereby imposed, by distress and sale of the offender's goods and chattels, in such manner as distresses and sales for forfeitures are authorised and directed to be levied by virtue of this Act.

70. From and after the commencement of this Act it shall not be lawful for any person to sink any pit or shaft, or to erect or cause to be erected any steam engine, gin, or other like machine, or any machinery attached thereto, within the distance of 25 yards, nor any windmill within 50 yards, from any part of any carriageway or cartway, unless such pit or shaft, or steam engine, gin, or other like engine, or machinery, shall be within some house or other building, or behind some wall or fence sufficient to conceal or screen the same from the said carriageway or cartway, so that the same may not be dangerous to passengers, horses, or cattle ;

Steam Engines, &c., not to be erected within a certain distance of roads.

Nor shall it be lawful for any person to make or cause to be made any fire for calcining or burning of ironstone, limestone, bricks, or clay, or the making of coals, within the distance of 15 yards from any part of the said carriageway or cartway, unless the same shall be within some house or other building or behind some wall or fence, sufficient to screen the same from the same carriageway or cartway as aforesaid ;

And in case any person shall offend in any of the cases aforesaid every such person so offending shall forfeit and pay any sum not exceeding £5 for each and every day such pit, shaft, windmill, steam engine, gin, machine, or fire shall be permitted to continue contrary to the provisions of this Act ;

Which said penalties shall be levied, recovered, and applied in such and the same manner as any penalty or forfeiture for any other offence on any Highway may be levied, recovered, and applied :

Provided that nothing herein contained shall be construed to restrain any person or persons

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from using, repairing, rebuilding, or enlarging any windmill, steam engine, gin, or other like machine, or any kiln or other erection used for the purpose of calcining or burning of ironstone, limestone, bricks, or clay, or the making of coles, which may have been erected and may be in existence at the passing of this Act.

Penalty on persons committing Nuisances by riding on footpaths, &c.;

By injuring the road;

By damaging banks, causeways, direction posts, mile-stones, &c.;

By making fires;

By baiting bulls;

By laying timber, &c.;

By running of filth.

Rubbish laid on or near Highway, so as to be a nuisance, to be removed on notice, or Surveyor to dispose of same.

Punishing persons guilty of Pound-breach.

Names of owners to be painted on waggons, &c., in the manner herein mentioned.

72. If any person shall wilfully ride upon any footpath or causeway by the side of any road made or set apart for the use or accommodation of foot passengers; or shall wilfully lead or drive any horse, ass, sheep, mule, swine, or cattle, or carriage of any description, or any truck or sledge, upon any such footpath or causeway; or shall tether any horse, ass, mule, swine, or cattle on any Highway, so as to suffer or permit the tethered animal to be thereon;

Or shall cause any injury or damage to be done to the said Highway, or the hedges, posts, rails, walls, or fences thereof; or shall wilfully obstruct the passage of any footway; or wilfully destroy or injure the surface of any Highway; or shall wilfully or wantonly pull up, cut down, remove, or damage the posts, blocks, or stones fixed by the said Surveyor as herein directed; or dig or cut down the banks which are the securities and defence of the said Highways; or break, damage, or throw down the stones, bricks, or wood fixed upon the parapets or battlements of bridges, or otherwise injure or deface the same; or pull down, destroy, obliterate, or deface any mile-stone or post, graduated or direction post or stone erected upon any Highway;

Or shall play at football or any other game on any part of the said Highways, to the annoyance of any passenger or passengers;

Or if any hawker, higgler, gipsy, or other person travelling shall pitch any tent, booth, stall, or stand, or encamp upon any part of any Highway;

Or if any person shall make or assist in making any fire, or shall wantonly fire off any gun or pistol, or shall set fire to or wantonly let off or throw any squib, rocket, serpent, or other firework whatsoever within 50 feet of the centre of such carriageway or cartway; or bait, or run for the purpose of baiting, any bull, upon or near any Highway;

Or shall lay any timber, stone, hay, straw, dung, manure, lime, soil, ashes, rubbish, or other matter or thing whatsoever upon such Highway, to the injury of such Highway, or to the injury, interruption, or personal danger of any person travelling thereon;

Or shall suffer any filth, dirt, lime, or other offensive matter or thing whatsoever to run or flow into or upon any Highway from any house, building, erection, lands, or premises adjacent thereto, or shall in any way wilfully obstruct the free passage of any such Highway;

Every person so offending in any of the cases aforesaid shall for each and every such offence forfeit and pay any sum not exceeding 40s., over and above the damages occasioned thereby.

73. If any timber, stone, hay, straw, dung, manure, lime, soil, ashes, rubbish, or other matter or thing whatsoever shall be laid upon any Highway so as to be a nuisance, and shall not, after notice given by the Surveyor, Assistant Surveyor, or District Surveyor, be forthwith removed, it shall and may be lawful for the Surveyor, Assistant Surveyor, or District Surveyor, by order in writing from any one Justice, to clear the said Highway, by removing the said stone, hay, straw, dung, manure, soil, ashes, rubbish, or other matter or thing as aforesaid, and to dispose of the same, and to apply the proceeds arising therefrom towards the repairs of the Highway within the Parish in which such Highway may be situate;

Provided nevertheless, that if any soil, ashes, or rubbish shall be laid on any Highway, and such soil, ashes, or rubbish shall not be of sufficient value to defray the expense of removing them, the person who laid or deposited such soil, ashes, or rubbish shall repay to the said Surveyor, Assistant Surveyor, or District Surveyor the money which he shall have necessarily expended for the removal thereof, which money, in case the same shall not be forthwith repaid, shall be levied as forfeitures are herein directed to be levied.

75. In case any person shall release or attempt to release any horse, ass, sheep, swine, or other beast or cattle which shall be seized for the purpose of being impounded under the authority of this Act, from the Pound or place where the same shall be so impounded, or in the way to or from any such Pound or place, or shall pull down, damage, or destroy the same Pound or place, or any part thereof, or any lock or bolt belonging thereto or with which the same shall be fastened, or shall rescue or release, or attempt to rescue or release, any distress or levy which shall be made under the authority of this Act, until or before such horse, ass, sheep, swine, or other beast or cattle seized or so impounded, or such distress or levy so made, shall be discharged by due course of Law, every person so offending shall, upon conviction thereof before any 2 of His Majesty's Justices of the Peace, either upon confession of the party or parties offending or upon oath of one credible witness, forfeit and pay any sum not exceeding £20, at the discretion of the said Justices, and in default thereof be committed by such Justices, by Warrant under their hands and seals, to the House of Correction of the County wherein the said offence shall have been committed, there to be kept to hard labour for any time at the discretion of the Justices, not exceeding 3 calendar months.

76. The owner of every waggon, cart, or other such carriage shall paint or cause to be painted in one or more straight line or lines, upon some conspicuous part of the right or off-side of his waggon, cart, or other such carriage, or upon the off-side shafts thereof, before the same shall be used on any Highway, his Christian name and surname, or the style and title by which he is commonly designated, and the place of his trade or abode, or the Christian and surname and place of trade or abode of a partner or owner thereof, at full length, in large legible letters in white upon black, or black upon white, not less than one inch in height, and continue the same thereupon so long as such waggon, cart, or other such carriage shall be used upon any Highway;

And every owner of any waggon, cart, or other such carriage who shall use or allow the same

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to be used on any Highway without the name and descriptions painted thereon as aforesaid, or who shall suffer the same to become illegible, or who shall paint or cause to be painted any false or fictitious name or place of trade or abode on such waggon or cart or other such carriage, shall forfeit and pay, on conviction, for every such offence, a sum not exceeding 40s., with or without costs, as to the Justices before whom the conviction shall take place shall think fit.

77. No one person shall act as the driver of more than 2 carts, waggons, or other such carriages on any Highway :

One driver may take charge of two carts, drawn by one horse each.

Provided always, that it shall and may be lawful for any one person to act as the driver of 2 carts, waggons, or other such carriages, on any Highway, and for such carts to pass and travel on any Highway, being only under the care and superintendence of such single person :

Provided always, that such carts, waggons, or other carriages, when under the care of only one person, shall not be drawn by more than one horse each, and the horse of the hinder cart, waggon, or other carriage shall be attached by a rein in length not exceeding 4 feet to the back of the cart, waggon, or other carriage which shall be foremost ;

And in case the said horse shall not be so attached the driver of the said carts, waggons, or other carriages shall forfeit, on conviction, the sum of 20s., to be recovered as other penalties are by this Act to be recovered.

78. If the driver of any waggon, cart, or other carriage of any kind shall ride upon any such carriage, or upon any horse or horses drawing the same, on any Highway, not having some other person on foot or on horseback to guide the same (such carriages and carts as are driven with reins, and are conducted by some person holding the reins of all the horses drawing the same, excepted) ;

Drivers of carts not to ride thereon unless some other person guide them.

Or if the driver of any carriage whatsoever on any part of any Highway shall by negligence or wilful misbehaviour cause any hurt or damage to any person, horse, cattle, or goods conveyed in any carriage, passing or being upon such Highway, or shall quit the same, and go on the other side of the hedge or fence inclosing the same, or negligently or wilfully be at such distance from such carriage, or in such a situation whilst it shall be passing upon such Highway that he cannot have the direction and government of the horses or cattle drawing the same, or shall leave any cart or carriage on such Highway, so as to obstruct the passage thereof, or if any person shall drive or act as the driver of any waggon, cart, or other such carriage, not having the owner's name as hereby required painted and remaining legible thereon, and shall refuse to tell or to discover the true Christian and surname of the owner or principal owners of such waggon, cart, or carriage ;

Drivers causing damage or quitting the road, or driving carriage without owner's name, or not keeping the left side, or interrupting free passage, if not the owner to forfeit £5, if the owner £10.

Or if the driver of any waggon, cart, or other carriage whatsoever or of any horses, mules, or other beast of draught or burden, meeting any other waggon, cart, or other carriage, or horses, mules, or other beasts of burden, shall not keep his waggon, cart, or carriage, or horses, mules, or other beasts of burden, on the left or near side of the road ;

Or if any person shall in any manner wilfully prevent any other person from passing him, or any waggon, cart, or other carriage, or horses, mules, or other beasts of burden, under his care, upon such Highway, or by negligence or misbehaviour prevent, hinder, or interrupt the free passage of any person, waggon, cart, or other carriage, or horses, mules, or other beasts of burden, on any Highway, or shall not keep his waggon, cart, or other carriage, or horses, mules, or other beasts of burden, on the left or near side of the road for the purpose of allowing such passage ;

Or if any person riding any horse, or beast, or driving any sort of carriage, shall ride or drive the same furiously so as to endanger the life or limb of any passenger ;

Every person so offending in any of the cases aforesaid, and being convicted of any such offence, either by his own confession, the view of a Justice, or by the oath of one or more credible witnesses before any 2 Justices of the Peace, shall, in addition to any civil action to which he may make himself liable, for every such offence forfeit any sum not exceeding £5, in case such driver shall not be the owner of such waggon, cart, or other carriage, and in case the offender be the owner of such waggon, cart, or other carriage, then any sum not exceeding £10, and in either of the said cases shall, in default of payment, be committed to the common Gaol or House of Correction, there to be kept to hard labour for any time not exceeding 6 weeks, unless such forfeiture shall be sooner paid ;

And every such driver offending in either of the said cases shall and may, by the authority of this Act, with or without any Warrant, be apprehended by any person who shall see such offence committed, and shall be conveyed before any Justice of the Peace, to be dealt with according to Law ;

And if any such driver in any of the cases aforesaid shall refuse to discover his name, it shall and may be lawful for the said Justices of the Peace before whom he shall be taken, or to whom any such complaint shall be made, to commit him to the common gaol or house of correction, there to be kept to hard labour for any time not exceeding 3 months, or to proceed against him for the penalty aforesaid by a description of his person and the offence only, without adding any name or designation, but expressing in the proceedings that he refused to discover his name.

Proceeding if driver will not discover his name.

79. And whereas offences may be committed against this Act by persons whose names are unknown to the Surveyor, Assistant Surveyor, or District Surveyor :

Unknown Offenders.

It shall be lawful for the Surveyor, Assistant Surveyor, or District Surveyor, or any person acting under his authority, and such other person as he shall call to his assistance, or any other person witnessing the commission of the offence, without any other authority than this Act to seize and detain such unknown person who shall commit any such offence, and take him forthwith before any Justice of the Peace, who shall proceed and act with respect to such offence according to the provisions of this Act.

80. The said Surveyor shall and he is hereby required to make, support, and maintain, or cause to be made, supported, and maintained, every public cartway leading to any market town 20 feet wide at the least, and every public horseway 8 feet wide at the least, and to support and

Cartways to be 20 feet wide, horseways 8 feet, and footways 3 feet.

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Width of gates across public cartways and horseways.

Justices may order highways to be widened.

Surveyor to agree with owners of lands for recompence, or the same may be assessed by a Jury at Quarter Sessions.

On payment of money assessed, ground to be deemed a public Highway.

When there is not money sufficient, a Rate may be made by order of the Justices at their Quarter Sessions, not exceeding one-third of Rate.

Cost of proceedings, by whom payable.

maintain every public footway by the side of any carriageway or cartway 3 feet at the least, if the ground between the fences including the same will admit thereof :

Provided nevertheless, that nothing herein contained shall require any Surveyor to make or form any public footway without the consent of the inhabitants in Vestry assembled.

81. If any gate across any public cartway shall be less than 10 feet wide, or any gate across any public horseway shall be less than 5 feet wide, clear between the posts thereof, then and in every such case, upon notice in writing from the Surveyor to the person to whom such gate shall belong, left at the dwelling house of such person or his steward or agent, requiring him to enlarge the same, if such person shall neglect for the space of 21 days after such notice shall have been left as aforesaid to remove or enlarge such gate, he shall forfeit a sum not exceeding 10s. for every day he shall so neglect to remove or to enlarge such gate as aforesaid.

82. Where it shall appear, upon the view of 2 Justices of the Peace, that any Highway is not of sufficient breadth, and might be widened and enlarged, such Justices shall and they are hereby empowered, within their respective Divisions, to order such Highway respectively to be widened and enlarged in such manner as they shall think fit, so that the said Highway, when widened and enlarged, shall not exceed 30 feet in breadth, and that neither of the said powers do extend to pull down any house or building, or to take away the ground of any garden, lawn, yard, court, park, paddock, planted walk, plantation, or avenue to any house, or any inclosed ground set apart for building ground or as a nursery for trees ;

And for the satisfaction of the person, Body Politic or Corporate, who is seised or possessed of or interested in their own right or in trust for any other person in the said ground that shall be laid into the said Highway respectively so to be widened and enlarged, the said Surveyor, under the direction and with the approbation of the said Justices in writing, shall and is hereby empowered to make an agreement with him for the recompence to be made for such ground, and for the making such new ditches and fences as shall be necessary, according and in proportion to their several and respective interests therein, and also with any other person, Body Politic or Corporate, that may be injured by the widening and enlarging such Highway, for the satisfaction to be made to him respectively as aforesaid, and if the said Surveyor, under the direction and with the approbation of the said Justices, cannot agree with the said person, Body Politic or Corporate, or if he cannot be found, or shall refuse to treat or take such recompence or satisfaction as shall be offered to them respectively by such Surveyor, then the Justices of the Peace at any General Quarter Sessions to be holden for the limit wherein such ground shall lie, upon Certificate in writing signed by the Justices making such view as aforesaid of their proceedings in the premises, and upon proof of 14 days notice in writing having been given by the Surveyor of such parish to the owner, occupier, or other person, Body Politic or Corporate, interested in such ground, or to his Guardian, Trustee, Clerk, or Agent, signifying an intention to apply to such Quarter Sessions, for the purpose of taking such ground, shall impanel a Jury of 12 disinterested men out of the persons returned to serve as Jurymen at such Quarter Sessions ;

And the said Jury shall upon their oaths, to the best of their judgment, assess the damages to be given and recompence to be made to the owners and others interested as aforesaid in the said ground for their respective interests, as they shall think reasonable, not exceeding 40 years purchase for the clear yearly value of the ground so laid out, and likewise such recompence as they shall think reasonable for the making of new ditches and fences on the side of the said Highway that shall be so widened and enlarged, and also satisfaction to any person, Body Politic or Corporate, that may be otherwise injured by the widening and enlarging the said Highways respectively ;

And upon payment or tender of the money so to be awarded and assessed to the person, Body Politic or Corporate, entitled to receive the same, or leaving it in the hands of the Clerk of the Peace of such limit, in case such person, Body Politic or Corporate, cannot be found or shall refuse to accept the same, for the use of the owner of or others interested in the said ground, the interest of the said person, Body Politic or Corporate, in the said ground, shall be for ever divested out of them and the said ground, after such agreement or verdict as aforesaid, shall be esteemed and taken to be a public Highway to all intents and purposes whatsoever ;

Saving nevertheless to the owner of such ground all mines, minerals, and fossils lying under the same which can or may be got without breaking the surface of the said Highway, and also all timber and wood growing upon such ground to be felled and taken by such owner within one month after such Order shall have been made, or in default thereof to be felled by the said Surveyor within the respective months aforesaid, and laid upon the land adjoining, for the benefit of the said owner ;

And where there shall not appear sufficient money in the hands of the Surveyor for the purpose aforesaid, then the said 2 Justices, in cases of agreement, or the said Court of Quarter Sessions, after such verdict as aforesaid, shall direct the Surveyor to make, collect, and levy an equal Rate in the same manner as the Rate by this Act authorised to be made, and to pay the money to the person, Body Politic or Corporate, so interested, in such manner as the said Justices or Court of Quarter Sessions respectively shall direct and appoint ;

And the money thereby raised shall be employed and accounted for, according to the order and direction of the said Justices or Court of Quarter Sessions respectively, for and towards the purchasing the land to widen and enlarge the said Highway, and for making the said ditches and fences, and also satisfaction for the damages sustained thereby ;

Provided that no such Rate to be made in any one year shall exceed one-third part of the Rate by this Act authorised to be levied, in addition to the Rate for the repair of the Highways.

83. In case such Jury shall give in and deliver a verdict for more monies as a recompence for the right, interest, or property of any person, Body Politic or Corporate, in such lands or grounds, or for the making such fence, or for such damage or injury to be sustained by him as aforesaid, than what shall have been proposed and offered by the said Surveyor before such application to

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the said Court of Quarter Sessions as aforesaid, that then and in such case the costs and expenses attending the said several proceedings shall be borne and paid by the Surveyor out of the monies in his hands, or to be assessed and levied by virtue and under the powers of this Act;

But if such Jury shall give and deliver a verdict for no more or for less monies than shall have been so offered and proposed by the said Surveyor before such application to the said Court of Quarter Sessions, that then the said costs and expenses shall be borne and paid by the person, Body Politic or Corporate, who shall have refused to accept the recompence and satisfaction so offered to him as aforesaid.

84. When the inhabitants in Vestry assembled shall deem it expedient that any Highway should be stopped up, diverted, or turned, either entirely or reserving a bridleway or footway along the whole or any part or parts thereof, the Chairman of such meeting shall by an Order in writing direct the Surveyor to apply to 2 Justices to view the same, and shall authorise him to pay all the expenses attending such view, and the stopping up, diverting, or turning such Highway, either entirely or subject to such reservation as aforesaid, out of the money received by him for the purposes of this Act:

Provided nevertheless, that if any other party shall be desirous of stopping up, diverting, or turning any Highway as aforesaid, he shall by a notice in writing require the Surveyor to give notice to the Churchwardens to assemble the inhabitants in Vestry, and to submit to them the wish of such person, and if such inhabitants shall agree to the proposal the said Surveyor shall apply to the Justices as last aforesaid for the purposes aforesaid;

And in such case the expenses aforesaid shall be paid to such Surveyor by the said party, or be recoverable in the same manner as any forfeiture is recoverable under this Act; and the said Surveyor is hereby required to make such application as aforesaid.

85. When it shall appear upon such view of such 2 Justices of the Peace, made at the request of the said Surveyor as aforesaid, that any public Highway may be diverted and turned, either entirely or subject as aforesaid, so as to make the same nearer or more commodious to the public, and the owner of the lands or grounds through which such new Highway so proposed to be made shall consent thereto by writing under his hand, or if it shall appear upon such view that any public Highway is unnecessary, the said Justices shall direct the Surveyor to affix a notice in the form or to the effect of Schedule (No. 19) to this Act annexed, in legible characters, at the place and by the side of each end of the said Highway from whence the same is proposed to be turned, diverted, or stopped up, either entirely or subject as aforesaid, and also to insert the same notice in one newspaper published or generally circulated in the County where the Highway so proposed to be diverted and turned or stopped up, either entirely or subject as aforesaid (as the case may be), shall lie, for 4 successive weeks next after the said Justices have viewed such public Highway, and to affix a like notice on the door of the Church of every Parish in which such Highway so proposed to be diverted, turned, or stopped up, either entirely or subject as aforesaid, or any part thereof, shall lie, on 4 successive Sundays next after the making such view;

And the said several notices having been so published, and proof thereof having been given to the satisfaction of the said Justices, and a plan having been delivered to them at the same time particularly describing the old and the proposed new Highway, by metes, bounds, and admeasurement thereof, which plan shall be verified by some competent Surveyor, the said Justices shall proceed to certify under their hands the fact of their having viewed the said Highway as aforesaid, and that the proposed new Highway is nearer or more commodious to the public;

And if nearer the said certificate shall state the number of yards or feet it is nearer, or if more commodious, the reasons why it is so;

And if the Highway is proposed to be stopped up as unnecessary, either entirely or subject as aforesaid, then the Certificate shall state the reason why it is unnecessary;

And the said Certificate of the said Justices, together with the proof and plan so laid before them as aforesaid, shall as soon as conveniently may be after the making of the said Certificate be lodged with the Clerk of the Peace for the County in which the said Highway is situated, and shall (at the Quarter Sessions which shall be holden for the limit within which the Highway so diverted and turned or stopped up, either entirely or subject as aforesaid, shall lie, next after the expiration of 4 weeks from the day of the said Certificate of the said Justices having been lodged with the Clerk of the Peace as aforesaid), be read by the said Clerk of the Peace in open Court;

And the said Certificate, together with the proof and plan as aforesaid, as well as the consent in writing of the owner of the land through which the new Highway is proposed to be made, shall be enrolled by the Clerk of the Peace amongst the records of the said Court of Quarter Sessions:

Provided always, that any person whatever shall be at liberty, at any time previous to the said Quarter Sessions, to inspect the said Certificate and plan so as aforesaid lodged with the said Clerk of the Peace, and to have a copy thereof, on payment to the Clerk of the Peace at the rate of 6d. per folio, and a reasonable compensation for the copy of the plan.

86. In any case where it is proposed to stop up or divert more than one Highway, which Highways shall be deemed to be so connected together as that they cannot be separately stopped or diverted without interfering one with the other, it shall be lawful to include such different Highways in one Order or Certificate.

87. In the event of any appeal being brought against the whole or any part or parts of any Order or Certificate for diverting more Highways than one, it shall be lawful for the Court to decide upon the propriety of confirming the whole or any part or parts of such Order or Certificate, without prejudice to the remaining part or parts thereof.

88. When any such Certificate shall have been so given as aforesaid it shall and may be lawful for any person who may think that he would be injured or aggrieved if any such Highway should be ordered to be diverted and turned or stopped up, either entirely or subject as aforesaid, and such new Highway set out and appropriated in lieu thereof as aforesaid, or if any unnecessary Highway should be ordered to be stopped up as aforesaid, to make his complaint thereof by appeal

Previous to a Highway being stopped up, &c., Surveyor to request Justices to view the same.

Proceedings for diverting, &c., certain Highways, and stopping up unnecessary Highways.

As to stopping up Highways connected together.

Court may confirm Order for so doing, wholly or in part.

Persons aggrieved if Highway should be ordered to be stopped up, &c., may appeal.

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to the Justices of the Peace at the said Quarter Sessions, upon giving to the Surveyor 10 days notice in writing of such appeal, together with a statement in writing of the grounds of such appeal, who is hereby required, within 48 hours after the receipt of such notice, to deliver a copy of the same to the party by whom he was required to apply to the Justices to view the said Highway ;

Provided that in all cases where the said Surveyor shall have been directed by the inhabitants in Vestry assembled to apply to such Justices as aforesaid, then the said Surveyor shall not be required to deliver a copy of such notice to any party ;

Provided also, that it shall not be lawful for the Appellant to be heard in support of such appeal unless such notice and statement shall have been so given aforesaid, nor on the hearing of such appeal to go into or give evidence of any other grounds of appeal than those set forth in such statement as aforesaid.

In case of Appeal, Jury at Sessions to determine whether new Highway is nearer, &c.

89. In case of such appeal the Justices at the said Quarter Sessions shall, for the purpose of determining whether the proposed new Highway is nearer or more commodious to the public, or whether the public Highway so intended to be stopped up, either entirely or subject as aforesaid, is unnecessary, or whether the said party appealing would be injured or aggrieved, impanel a Jury of 12 disinterested men out of the persons returned to serve as Jurymen at such Quarter Sessions ;

And if, after hearing the evidence produced before them, the said Jury shall return a verdict that the proposed new Highway is nearer or more commodious to the public, or that the public Highway so intended to be stopped up, either entirely or subject as aforesaid, is unnecessary, or that the party appealing would not be injured or aggrieved, then the said Court of Quarter Sessions shall dismiss such appeal, and make the Order herein mentioned for diverting and turning and stopping up such Highway, either entirely or subject as aforesaid, or for diverting, turning, and stopping up of such old Highway, and purchasing the ground and soil for such new Highway, or for stopping up such unnecessary Highway, either entirely or subject as aforesaid ;

But if the said Jury shall return a verdict that the proposed new Highway is not nearer or not more commodious to the public, or that the Highway so intended to be stopped up, either entirely or subject as aforesaid, is not unnecessary, or that the party appealing would be injured or aggrieved, then the said Court of Quarter Sessions shall allow such appeal, and shall not make such Order as aforesaid.

Costs to be awarded In Appeal against stopping up, &c., Highway.

90. The Court of Quarter Sessions is hereby authorised and required to award to the party giving or receiving notice of appeal such costs and expenses as shall be incurred in prosecuting or resisting such appeal, whether the same shall be tried or not, and such costs and expenses shall be paid by the Surveyor or other party as aforesaid at whose instance the notice for diverting and turning or stopping up the Highway, either entirely or subject as aforesaid, shall have been given ;

And in case the said Surveyor or other party as aforesaid shall not appear in support thereof, the said Court of Quarter Sessions shall award the costs of the Appellant to be paid by such Surveyor or other party as aforesaid, and such costs shall be recoverable in the same manner as any penalties or forfeitures are recoverable under this Act.

If no Appeal be made, or if dismissed, Sessions to make order for diverting, &c., and the old ways may be stopped.

91. If no such appeal be made, or being made shall be dismissed as aforesaid, then the Justices at the said Quarter Sessions shall make an Order to divert and turn and to stop up such Highway, either entirely or subject as aforesaid, or to divert, turn and stop up such old Highway, and to purchase the ground and soil for such new Highway, or to stop up such unnecessary Highway, either entirely or subject as aforesaid, by such ways and means, and subject to such exceptions and conditions in all respects, as in this Act is mentioned in regard to Highways to be widened, and the proceedings thereupon shall be binding and conclusive on all persons whomsoever ;

New Highway afterwards to continue a public Highway, &c.

And the new Highways so to be appropriated and set out shall be and for ever after continue a public Highway to all intents and purposes whatsoever ; but no old Highway (except in the case of stopping up of such useless Highway as herein is mentioned) shall be stopped until such new Highway shall be completed and put into good condition and repair, and so certified by 2 Justices of the Peace upon view thereof, which Certificate shall be returned to the Clerk of the Peace, and by him enrolled amongst the records of the Court of Quarter Sessions next after such Order as aforesaid shall have been made, pursuant to the directions herein-before contained.

Party liable to repair old Highways to repair new Highways.

92. In every case in which a Highway shall have been turned or diverted under the provisions of this Act the Parish or other party which was liable to the repair of the old Highway shall be liable to the repair of the new Highway without any reference whatever to its parochial locality.

Provisions as to widening a Highway to extend to all Highways repaired *ratione tenuræ*, &c.

93. The powers and provisions of this Act contained with respect to the widening and enlarging, diverting, turning, or stopping up, any Highway, shall be applicable to all Highways which any person, Bodies Politic or Corporate, is or are bound to repair by reason of any grant, tenure, limitation, or appointment of any charitable gift or otherwise howsoever ;

And that when such last-mentioned Highways are so widened or enlarged, turned or diverted, the same shall and may, by an order of the Justices at a Special Sessions for the Highways, be placed under the control and care of the Surveyor of the Parish in which such Highways may be situate, and shall be from time to time thereafter repaired and kept in repair by the said Parish ;

Justices to fix annual or other amount payable by party previously repairing.

Provided also, that the said Highways so widened, enlarged, diverted, or turned shall be viewed by 2 Justices of the Peace, who shall make a report thereof to the Justices at a Special Sessions for the Highways ;

And such last-mentioned Justices shall, by an Order under their hands, fix the proportionate sum which shall be annually paid, or shall fix a certain sum to be paid, by such persons, Bodies Politic or Corporate, his or their heirs, successors, or assigns, to the said Surveyors of the Parish, in lieu of thereafter repairing the said part of the said old Highway ;

And the Order of the said last-mentioned Justices shall be and continue binding on all such persons, Bodies Politic or Corporate, their heirs, successors, or assigns ;

And in default of payment thereof the said Surveyor shall proceed for the recovery of the same in the manner as any penalties and forfeitures are recoverable under this Act.

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94. From and after the commencement of this Act, if any Highway is out of repair, or is not well and sufficiently repaired and amended, and information thereof, on the oath of one credible witness, is given to any Justice of the Peace, it shall and may be lawful for such Justice, and he is hereby authorised and required, to issue a summons requiring the Surveyor of the Parish, or other person or Body Politic or Corporate, chargeable with such repairs, to appear before the Justices at some Special Sessions for the Highways in the said summons mentioned, to be held within the division in which the said Highway may be situate;

Mode of proceeding before Justices if Highway is out of repair.

And the said Justices shall either appoint some competent person to view the same, and report thereon to the Justices in Special Sessions assembled, on a certain day and place to be then and there fixed, at which the said Surveyor of the Highways, or other party as aforesaid, shall be directed to attend, or the said Justices shall fix a day whereon they or any 2 of them shall attend to view the said Highway;

And if to the Justices at such Special Sessions, on the day and at the place so fixed as aforesaid, it shall appear, either on the report of the said persons so appointed by them to view, or on the view of such Justices, that the said Highway is not in a state of thorough and effectual repair, they the said Justices at such last-mentioned Special Sessions shall convict the said Surveyor or other party liable to the repair of the said Highway in any penalty not exceeding £5, and shall make an Order on the said Surveyor or other person or Bodies Politic or Corporate liable to repair such Highway, by which Order they shall limit and appoint a time for the repairing of the same;

And in default of such repairs being effectually made within the time so limited, the said Surveyor, or such other person or Body Politic or Corporate as aforesaid, shall forfeit and pay to some person, to be named and appointed in a second Order, a sum of money to be therein stated, and which shall be equal in amount to the sum which the said Justices shall, on the evidence produced before them, judge requisite for repairing such Highway, which money shall be recoverable in the same manner as any forfeiture is recoverable under this Act, and such money, when recovered, shall be applied to the repair of such Highway;

And in case more parties than one are bound to repair any such Highway, the said Justices shall direct in their said Order what proportion shall be paid by each of the said parties:

Provided that if the said Highway so out of repair is a part of the Turnpike road, the said Justices shall summon the Treasurer or Surveyor or other officer of such Turnpike road, and the order herein directed to be made shall be made on such Treasurer or Surveyor or other officer as aforesaid, and the money therein stated shall be recoverable as aforesaid:

Provided nevertheless, that the said Justices shall not have power to make such Order as aforesaid in any case where the duty or obligation of repairing the said Highway comes in question.

In what cases Justices cannot interfere.

95. If on the hearing of any such summons respecting the repair of any Highway the duty or obligation of such repairs is denied by the Surveyor on behalf of the inhabitants of the Parish, or by any other party charged therewith, it shall then be lawful for such Justices and they are hereby required to direct a Bill of Indictment to be preferred, and the necessary witnesses in support thereof to be subpoenaed, at the next Assizes to be holden in and for the said County, or at the next General Quarter Sessions of the Peace for the County, Riding, Division, or Place wherein such Highway shall be, against the inhabitants of the Parish or the party to be named in such Order for suffering and permitting the said Highway to be out of repair;

Mode of proceeding if obligation to repair is disputed.

And the costs of such prosecution shall be directed by the Judge of Assize before whom the said Indictment is tried, or by the Justices at such Quarter Sessions, to be paid out of the Rate made and levied in pursuance of this Act in the Parish in which such Highway shall be situate:

Provided nevertheless, that it shall be lawful for the party against whom such Indictment shall be so preferred at the Quarter Sessions as aforesaid to remove such Indictment by *Certiorari* or otherwise into his Majesty's Court of King's Bench.

96. No fine, issue, penalty, or forfeiture for not repairing the Highway, or not appearing to any Indictment for not repairing the same, shall hereafter be returned into the Court of Exchequer or other Court, but shall be levied by and paid into the hands of such person, residing in or near the Parish where the road shall lie, as the Justices or Court imposing such fines, issues, penalties, or forfeitures shall order and direct, to be applied towards the repair and amendment of such Highway;

Fines, penalties, and forfeitures, how to be levied and applied.

And the person so ordered to receive such fines shall and is hereby required to receive, apply, and account for the same according to the direction of such Justices or Court, or in default thereof shall forfeit double the sum received;

And if any fine, issue, penalty, or forfeiture to be imposed for not repairing the Highway, or not appearing as aforesaid, shall hereafter be levied on any inhabitant of such Parish, Township, or Place, then such inhabitant shall and may make his complaint to the Justices at a Special Sessions for the Highways;

And the said Justices are hereby empowered and authorised, by Warrant under their hands, to make an Order on the Surveyor of the Parish for payment of the same out of the money receivable by him for the Highway Rate, and shall within 2 months next after service of the said Order on him pay unto such inhabitant the money therein mentioned.

97. If any Surveyor or other person shall be summoned before any Justice to answer any Information or Complaint exhibited or made against him touching or concerning any offence committed or alleged to have been committed by such Surveyor or other person against the provisions of this Act, or for any supposed neglect of duty, in case such Surveyor or other person be convicted thereof, such Justice shall be authorised and empowered to order the payment by such Surveyor or other person of all costs or proceedings against him;

Justices may award costs to defendant, where Information is withdrawn or dismissed.

But in case such Information or Complaint shall afterwards be withdrawn or quashed or dismissed, or if the defendant shall be acquitted of the offence or neglect of duty charged against him, it shall be lawful for such Justices to order and award that the person exhibiting or making

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such information or complaint shall pay to the defendant all such costs as to such Justice shall seem reasonable;

And in default of immediate payment of the sum so awarded it shall be lawful for such Justices to cause the same to be levied by distress and sale of the goods and chattels of the person ordered to pay the same, together with the costs of such distress and sale;

And if goods and chattels of such person sufficient to answer the sum so awarded, with such costs as aforesaid, cannot be found, it shall be lawful for such Justices to commit such person to the common gaol or House of Correction, there to be kept to hard labour for any time not exceeding one calendar month, unless the sum so awarded, together with all costs and expenses, shall be sooner paid and satisfied.

Court may award costs to prosecutor.

98. It shall and may be lawful for the Court before whom any Indictment shall be preferred for not repairing Highways to award costs to the prosecutor to be paid by the person so indicted, if it shall appear to the said Court that the defence made to such Indictment was frivolous or vexatious.

Presentments as to Highways abolished.

99. From and after the commencement of this Act it shall not be lawful to take or commence any legal proceeding, by presentment against the inhabitants of any Parish, or other person, on account of any Highway or Turnpike road being out of repair.

* * * * *

Justices may proceed by summons in recovery of penalties.

101. In all cases in which any penalty or forfeiture is recoverable before Justices of the Peace under this Act it shall and may be lawful for any Justice to whom complaint shall be made of any such offence to summon the party complained against before any 2 Justices, and on such summons the said 2 Justices may hear and determine the matter of such complaint, and on proof of the offence convict the offender, and adjudge him to pay the penalty or forfeiture incurred, and proceed to recover the same, although no Information in writing shall have been exhibited or taken by or before such Justice;

And all such proceedings by summons without Information shall be as good, valid, and effectual to all intents and purposes as if an Information in writing was exhibited.

Misconduct of witnesses.

102. If any person, after having been paid or tendered a reasonable sum of money for his costs, charges, and expenses, shall be summoned as a witness to give evidence before any Justices of the Peace touching any matter or fact contained in any Information or Complaint for any offence against this Act either on the part of the prosecutor or the person accused, and shall refuse or neglect to appear at the time and place for that purpose appointed, without a reasonable excuse for his refusal or neglect, or appearing shall (after having been paid or tendered a reasonable sum for his costs, charges, and expenses), refuse to be examined upon oath and give evidence before such Justice of the Peace, then and in either of such cases such person shall forfeit for every such offence any sum not exceeding £5.

Forfeitures, costs, and charges may be levied by distress and sale.

103. All penalties and forfeitures by this Act inflicted or authorised to be imposed for any offence against the same, and all balances due from a Surveyor, and all costs and charges to be allowed and ordered by the authority of this Act (the manner of levying, recovering, and applying of which is not hereby otherwise particularly directed), shall, upon proof and conviction of the offences respectively before any 2 or more Justices, either by the confession of the party offending or by the oath of any credible witness or witnesses (which oath such Justices are in every case hereby fully authorised to administer), or upon Order made as aforesaid, be levied, together with the costs attending the Information, Summons, and Conviction, by distress and sale of the goods and chattels of the offender or person liable or ordered to pay the same respectively, by Warrant under the hands of 2 or more Justices before whom the party may have been convicted (which Warrant such Justices are hereby empowered and required to grant);

And the overplus (if any), after such penalties, forfeitures, and fines and the charges of such distress and sale, are deducted, shall be returned upon demand, unto the owner or owners of such goods and chattels;

And in case such fines, penalties, and forfeitures shall not be forthwith paid upon conviction, then it shall be lawful for such Justices as aforesaid to order the offender or offenders so convicted to be detained and kept in safe custody until return can be conveniently made to such Warrant of distress, unless the offender or offenders shall give sufficient security, to the satisfaction of such Justices as aforesaid, for his or their appearance before such Justices on such day or days as shall be appointed for the return of such Warrant of distress, such day not being later than 7 days from the time of taking any such security, and which security the said Justices as aforesaid are hereby empowered to take by way of recognizance or otherwise;

Or in case it shall appear to the satisfaction of such Justices, either by the confession of the offender or otherwise, that he hath not goods or chattels within the jurisdiction of such Justices sufficient whereon to levy all such penalties and forfeitures, costs and charges, such Justices may, at their discretion, without issuing any Warrant of distress, commit the offender for such period of time, and in such and like manner, as if a Warrant of distress had been issued, and *nulla bona* returned thereon;

But if a Warrant of distress shall be issued, and upon the return thereof it shall appear that no sufficient distress can be had whereupon to levy the said penalty, forfeiture or fine, and costs and expenses aforesaid, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of such Justices, upon the confession of the offender or otherwise, that he hath not sufficient goods and chattels whereupon such penalty, forfeiture or fine, costs and expenses, could be levied if a Warrant of distress were issued, such Justices shall not be required to issue such Warrant, but in such case such Justices are hereby required, by Warrant under their hands to cause such offender or offenders to be committed to the common gaol or House of Correction of the County, Riding, or Place where the offender shall be or reside, there to be kept to hard labour for

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any term not exceeding 3 calendar months, unless such penalties, forfeitures and fines, and all reasonable charges attending the same, shall be sooner paid and satisfied;

And the penalties and forfeitures, when so levied, shall be paid, the one half to the informer, and the other half to the Surveyor of the Parish where such offence, neglect, or default shall happen, to be applied towards the repair of the Highways thereof, unless otherwise directed by this Act; but in case the Surveyor shall be the informer, then the whole shall be applied towards the repair of such Highway.

Application of penalties.

104. Where any distress shall be made for any sum of money to be levied by virtue of this Act, the distress itself shall not be deemed unlawful, nor the party making the same be deemed a trespasser, on account of any default or want of form in any proceedings relating thereto, nor shall the party distraining be deemed a trespasser *ab initio* on account of any irregularity which shall be afterwards done in making the distress, but the person aggrieved by such irregularity may recover full satisfaction for the special damage in an Action on the case;

Provisions as to distresses.

Provided always, that no plaintiff shall recover in any Action for any irregularity, trespass, or wrongful proceedings, if tender of sufficient amends shall be made by or on behalf of the party who shall have committed or cause to be committed any such irregularity, trespass, or wrongful proceedings, before such Action brought;

Tender of amends may be made.

And in case no such tender shall have been made it shall and may be lawful for the defendant in any such Action, by leave of the Court where such Action shall depend, at any time before issue joined to pay into Court such sum of money as he shall see fit, whereupon such proceedings or orders and judgment shall be had, made, and given in and by such Court as in other Actions where the defendant is allowed to pay money into Court.

105. If any person shall think himself aggrieved by any Rate made under or in pursuance of this Act, or by any Order, conviction, judgment, or determination made, or by any matter or thing done, by any Justice or other person in pursuance of this Act, and for which no particular method of relief hath been already appointed, such person may appeal to the Justices at the next General or Quarter Sessions of the Peace to be held for the County, Division, Riding, or place wherein the cause of such complaint shall arise, such appellant first giving or causing to be given to the Surveyor or Surveyors, or to such Justice or other person by whose act such person shall think himself aggrieved, notice in writing of his intention to bring such appeal, together with a statement in writing of the grounds of such appeal, within 14 days after such Rate shall have been made or cause of complaint shall have arisen, and within 4 days after such notice entering into a recognizance before some Justice, with 2 sufficient sureties, conditioned to try such appeal at and abide the Order of and pay such costs as shall be awarded by the Justices at such General or Quarter Sessions;

Appeals to Quarter Sessions.

And such Justices, upon hearing and finally determining the matter of such appeal, shall and may according to their discretion, award such costs to the party appealing or appealed against as they shall think proper;

And their determination in or concerning the premises shall be conclusive and binding on all parties to all intents and purposes whatsoever;

Provided nevertheless, that in case there shall not be time to give such notice and enter into such recognizance as aforesaid before the next Sessions to be holden after the making of any Rate or the cause of complaint shall have arisen, then and in every such case such appeal may be made to the next following Sessions, and shall be then heard and determined;

Provided also, that it shall not be lawful for the appellant to be heard in support of such appeal unless such notice and statement shall have been so given as aforesaid, nor on the hearing of such appeal to go into evidence of any other grounds of appeal than those set forth in such statement as aforesaid.

106. In all cases of appeal against the Rate or Assessment made in pursuance of this Act the several provisions and enactments contained in a certain Act made and passed in the 41st year of the reign of his late Majesty, King George the III., intituled "An Act for the better collection of the Rates made for the Relief of the Poor," shall be applicable thereto, as if the same had been repeated and re-enacted in this Act with respect to such appeals.

Provisions of 41 Geo. III. 23, applicable to this Act.

107. Provided always, and be it further enacted, that no Rate, nor any proceeding to be had touching the conviction of any offender against this Act, or any order made or any other matter or thing done or transacted in or relative to the execution of this Act, shall be vacated or quashed for want of form, or be removed or removable (except as herein mentioned) by *Certiorari*, or any other Writ or process whatsoever, into any of his Majesty's Courts of record at Westminster.

Rates and proceedings not to be quashed for want of form.

108. In any case of appeal the Court of Quarter Sessions before whom the same is heard and determined may, if they think fit, state the facts specially for the determination of His Majesty's Court of King's Bench thereon, in which case it shall be lawful to remove the proceedings, by Writ of *Certiorari* or otherwise, into the said Court of King's Bench.

Quarter Sessions may grant a special case.

109. No Action or Suit shall be commenced against any person for anything done in pursuance of or under the authority of this Act, until 21 days notice has been given thereof in writing to the Justice, Surveyor, or person against whom such action is intended to be brought, nor after 3 calendar months next after the fact committed for which such Action or Suit shall be so brought;

Limitation of Actions.

And every such Action shall be brought, laid, and tried where the cause of Action shall have arisen, and not in any other County or place;

And the defendant in such Action or Suit may plead the general issue, and give this Act and every special matter in evidence, at any trial which shall be had thereupon;

Defendant may plead the general issue.

And if the matter or thing shall appear to have been done under or by virtue of this Act, or if it shall appear that such Action or Suit was brought before 21 days notice thereof given as aforesaid, or that sufficient satisfaction was made or tendered as aforesaid, or if any Action or Suit shall

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Costs.	not be commenced within the time before limited, or shall be laid in any other County than as aforesaid, then the jury shall find a verdict for the defendant therein ; And if a verdict shall be found for such defendant, or if the plaintiff in such Action or Suit shall become nonsuit or suffer a discontinuance of such Action, or if, upon any demurrer in such Action, judgment shall be given for the defendant therein, then and in any of the cases aforesaid such defendant shall have costs as between attorney and client, and shall have such remedy for recovering the same as any defendant may have for his or her costs in any other case by Law.
Fees.	110. The several fees hereafter limited and expressed, and no others, shall be taken by the Clerk of the Peace, Clerk to the Justices, or others, for their several respective services in the execution of this Act (that is to say), the sum of 6d. for every Information ; the sum of 1s. for every Summons or Warrant, and 6d. for the service thereof ; the sum of 6d. for every notice, and 6d. for the service thereof ; the sum of 1s. for every Order, and 6d. for the service thereof ; the sum of 2s. for every Warrant of distress ; the sum of 1s. for every Appointment ; and the sum of 2s. for every Conviction : Provided always, that in no place regulated by a Local Act of Parliament, when the amount of the fees to be taken by the Clerk to the Justices or others, in any proceeding for the recovery of any Rate, shall be less than the fees herein-before mentioned, shall it be lawful for such Clerk to the Justices or others to demand or take a greater fee for any similar proceeding under this Act than the fee which may be mentioned or directed to be taken by such Local Act.
Expenses for defending prosecutions agreed upon at a Vestry.	111. If the inhabitants of any Parish shall agree at a Vestry to defend any Indictment found against any such Parish, or to appeal against any Order made by or proceeding of any Justice of the Peace in the execution of any powers given by this Act, or to defend any appeal, it shall and may be lawful for the Surveyor of such Parish to charge in his account the reasonable expenses incurred in defending such prosecution, or prosecuting or defending such appeal, after the same shall have been agreed to by such inhabitants at a Vestry or Public Meeting as aforesaid, and allowed by 2 Justices of the Peace within the Division where such Highway shall be ; Which expenses, when so agreed to or allowed, shall be paid by such Parish out of the fines, forfeitures, payments, and Rates authorised to be collected and raised by virtue of this Act : Provided nevertheless, that if the money so collected and raised is not sufficient to defray the expenses of repairing the Highways in the said Parish, as well as of defending such prosecution or prosecuting or defending such appeal, as aforesaid, the said Surveyor is hereby authorised to make, collect, and levy an additional Rate in the same manner as the Rate by this Act is authorised to be made for the repair of the Highway. [§ 112 relates to the Metropolis only.]
Act not to extend to turnpike roads, or to roads under Local Acts.	113. Nothing in this Act contained shall apply to any Turnpike roads, except where expressly mentioned, or to any roads, bridges, carriageways, cartways, horseways, bridleways, footways, causeways, churchways, or pavements, which now are or may hereafter be paved, repaired, or cleansed, broken up or diverted, under or by virtue of the provisions of any Local or Personal Act or Acts of Parliament.
Not to affect the Universities of Oxford and Cambridge ;	114. Nothing in this Act contained shall extend to alter or in any manner to affect any of the rights or privileges of the Universities of Oxford or Cambridge, or any of the powers vested by Charter or otherwise in the Chancellors, masters, and scholars, and their successors of the said Universities. [§ 115 relates to the City of London only.]
nor the Act 1 Geo. IV., c. vii.	116. Nothing in this Act contained shall extend to alter or in any manner affect the provisions of an Act passed in the first year of the reign of His late Majesty King George the IV., intituled "An Act for regulating the repairs of bridges in the County of Montgomery ;" so far as the same relates to the repairs of so much of the Highways as lie next adjoining to any ends of any Bridges within the said County of Montgomery, the repairs of which have already been made chargeable upon the Rates of the said County under the provisions of the said recited Act.
Saving for Commissioners of Sewers.	117. Nothing in this Act contained shall extend to or be deemed or construed to extend to alter, affect, restrain, or abridge the powers or authorities given to the Commissioners of Sewers by any Act of Parliament whatsoever, or to vary or alter any of the provisions or regulations thereby made, directed, or provided, anything herein contained to the contrary thereof in anywise notwithstanding.
Concerning the forms of proceedings.	118. The forms of proceedings relative to the several matters contained in this Act, which are set forth and expressed in the Schedule hereto annexed, shall be used upon all occasions, with such additions or variations only as may be necessary to adapt them to the particular exigencies of the case ; And that no objection shall be made or advantage taken for want of form in any such proceedings by any person whomsoever.
Commencement of Act.	119. This Act shall commence and take effect from and after the 20th day of March 1836.

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THE SCHEDULE
(*Stating the Forms to which this Act refers.*)

No. 1.

Notice to Person of his having been elected Surveyor.

A.B. take notice, That you were, at a Meeting held at [*insert the name of the Parish, &c.*] on the _____ day of _____ elected and chosen Surveyor [*or one of the Surveyors*] of the Highways for the said [*Parish, &c.*] for the year ensuing.
Dated the _____ day of _____

C.D., Chairman.

To A.B., of _____

No. 2.

Appointment of Surveyor with Salary.

At a Meeting of the Inhabitants of _____ in Vestry assembled at _____ on the _____ day of _____ A.B. was nominated, elected, and appointed as Surveyor of such Parish, for the purpose of carrying into execution the provisions of an Act passed in the 5th and 6th Year of the Reign of King William the IV., intituled "An Act," &c. [*here set out Title of Act*], for the year ensuing; and the Salary to be allowed to the said A.B. was fixed at the sum of _____ payable on _____ day of _____
Dated the _____

C.D., Chairman.

No. 3.

Appointment of Surveyor by Justices.

(to wit.) } At a Special Sessions for the Highways held at _____ in the Division, &c., of _____ by Justices of the Peace for the said County acting within the said Division, &c., on the _____ day of _____
WHEREAS it hath appeared to us the said Justices, on the oath of A.B. an inhabitant of the Parish of _____ that the inhabitants of the said Parish in Vestry assembled have neglected [*or refused*] to nominate and elect a Surveyor in manner and for the purposes mentioned in a certain Act made and passed in the 5th and 6th Year of the Reign of King William the IV., intituled "An Act," &c. [*here set out Title of Act*], [*or that the Surveyor appointed by the inhabitants of the said Parish is dead, or has ceased to possess the qualification required by the said Act, or has become disqualified, or has neglected to act, or has refused to carry into operation the duties imposed upon him by the said Act*], we do therefore hereby appoint you C.D. of _____ Surveyor for such Parish for the year ensuing [*or for the space of _____*] with the salary of _____ for your trouble; and you the said C.D. are faithfully and truly to execute the office of Surveyor according to the directions of the said Statute.
Given under our hands the day and year first above mentioned.

To C.D.

E.F.
G.H.

No. 4.

Form of Highway Rate.

Names of Occupiers or Persons rated.	Description of the Premises and Property rated.	Annual Value.	Sums assessed at 10d. in the Pound.
A.B.	House and Garden	£ s. d. 5 0 0	£ s. d. 0 4 2
C.D.	A Farmhouse, Lands and Buildings.	100 0 0	4 3 4
E.F.	A Warehouse	20 0 0	0 16 8
and so forth.			

A.B. } Surveyor [*or Surveyors*] of the Parish
C.D. } of _____

Hgh. F

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No. 5.

one thousand

[illegible]

No. 6.

Notice of intention to make Highway.

I do hereby give you Notice, That after the expiration of three calendar months from the date hereof I [or if given by the Clerk, &c. of a Body Politic or Corporate, describe them.] do intend to make a certain Highway in the Parish of [describing its situation and extent.] and to dedicate such Highway to the use of the public.

Dated this _____ day of _____

To *E.F. &c.*,
Surveyor of the Parish
of

A.B.
or
C.D. [Clerk, &c.]

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No. 7.

Certificate of Justices, of Highway having been made in a substantial manner, &c.

We, 2 of the Justices of the Peace in and for the County of _____ having viewed a certain Highway lately made by A.B. in the Parish of _____ in the said County, situate &c. [describing its situation and extent], do hereby certify, That the same has been made in a substantial manner, and of the width required by a certain Act made and passed in the 5th and 6th Year of the Reign of King William the IV., intituled "An Act," &c. [here set out Title of Act.]

Dated this _____ day of _____

C.D.
E.F.

No. 8.

Notice to remove Snow, &c.

I A.B., Justice of the Peace in and for the County of _____ do hereby give you, the Surveyor [or Surveyors] of the Parish of _____ Notice, that the Highway leading from _____ to _____ [describing its situation] is obstructed or impeded from the accumulation of snow [or from the falling down of the banks on the side of the said Highway, &c., as the case may be,] and require you to cause the same to be removed.

Dated this _____ day of _____

To C.D. and E.F., &c.,
Surveyors of the Parish
of _____

A.B., of, &c.

No. 9.

Schedule to be filled up by the Surveyors of Highways of all Parishes, and presented by them, with their Accounts, to the Magistrates at the end of every year.

State of the Roads and Highways	{	_____
— Bridges	{	_____
— Causeways	{	_____
— Hedges and Ditches	{	_____
— Watercourses	{	_____
State all Nuisances	{	_____
— all Encroachments	{	_____
— the Extent of Roads and Highways the Parish is liable to repair	{	_____
— what portion thereof has been re- paired, and where	{	_____
— what Materials were used for such repairs	{	_____
— the expense of such repairs	{	_____
— the amount levied during the year	{	_____

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No. 10.

License from Justices at Special Sessions for the Highways for a Surveyor to dig, &c., materials upon inclosed lands for the repair of Highways.

(to wit.) } To the Surveyor of the Parish of _____ in the Hundred of _____
in the said County.

Whereas by an Act passed in the 5th and 6th Year of the Reign of King William the IV., intituled "An Act," &c. [here set out Title of Act,] the Surveyor is authorised to dig, get, take, and carry away materials lying upon any lands or grounds within the Parish for which he is appointed, for the use and benefit of the Highways, but not without the consent of the Occupier or Owner of such lands or grounds, or his Agent, or a license from the Justices at a Special Sessions for the Highways: And whereas it appears to us _____ his Majesty's Justices of the Peace for the said County, and acting within the said [Hundred, &c.], at a Special Sessions for the Highways assembled, upon the oath of C.D. the said Surveyor [or one of the Surveyors], that he hath applied to A.B. of _____ for his consent to dig, get, take, and carry away

materials from the lands called or known by the names of _____ and _____ in his occupation [or of which he is the Owner, or in the occupation of J.K., or of which J.K. is the Owner, and the said A.B. his Agent], within the said [Parish, &c.], for the purposes aforesaid, and that the said materials are necessary for the repairs of the Highways, and that the said A.B. hath refused to permit the same to be dug, got, taken, and carried away; and the said A.B. having been duly summoned to appear before us, to show cause why such permission should not be granted, and having appeared before us accordingly [or having sent his Steward or Agent, or C.D. on his behalf, to attend us on that occasion, or but not having appeared,] we have heard what has been alleged, and taken the said matter into consideration, and are of opinion that the said materials are necessary, and ought to be dug, got, taken, and carried away for the purposes aforesaid: Therefore we do hereby give our license to the said Surveyor [or Surveyors] to dig, get, take, and carry away the same accordingly, the said Surveyor making satisfaction for the same, and also for the damage done to such lands, in the manner directed by the said Act. Given under our hands the _____ day of _____ one thousand eight hundred and _____

J.P.
K.P.

No. 11.

License from Justices at a Special Sessions for the Highways to get Materials for the Repair of the Highways in another Parish besides that wherein such Materials are to be employed.

(to wit.) } At a Special Session for the Highways held at _____ in the Hundred, &c., of _____
in the said County, by Justices of the Peace for the said County acting
within the said Hundred, on the _____ day of _____

It appearing to us, upon evidence this day received, that sufficient materials cannot conveniently be had within the waste land, common grounds, rivers or brooks, nor in the inclosed lands or grounds, lying within the [Parish, &c.] of _____ in the said Hundred, for the Repairs of the Highways within the said [Parish], nor in the waste lands, common grounds, rivers or brooks within the [Parish] of _____ adjoining to the said [Parish] of _____

we do hereby give our License to the Surveyor [or Surveyors] of the said [Parish] of _____ to search for, dig, get and carry materials within the inclosed lands or grounds of C.D. within the said [Parish] of _____ to be employed in the repair of the Highways within the said [Parish] of _____

it appearing from evidence before us that there are proper materials within the said lands for the purposes aforesaid lying convenient to the said Highways, and that after such materials shall be so taken there will be sufficient left for the use of the Highways within the said Parish of _____ upon the said Surveyor [or Surveyors] making satisfaction for the same, and also for the damage done to such lands, in the manner directed by the Act made and passed in the 5th and 6th Year of the Reign of King William the IV., intituled,

"An Act," &c. [here set out Title of Act], subject to such restrictions as are therein contained. Given under our hands the day and year above written.

J.P.
K.P.

No. 12.

Information to enable Justices to Fix Boundaries of Highway lying in Two Parishes.

County of _____ } At a Special Sessions for the Highways holden, &c.

I.S., the Surveyor [or one of the Surveyors] of the Parish of A., came before the Justices aforesaid, and informed them, that there is in the said County a certain common Highway leading from M. to N., and that there is a certain part of the said Highway, that is to say, so much thereof as lies between a certain place called C. and a certain other place called D., being in length _____

[as the case may be], one side of which last-mentioned part or the said Highway adjoining to the Parish of A. lies within the said Parish of A., and is to be and of right ought to be repaired by the said Parish of A. [or by, &c., describing the Body Politic or Corporate, or person liable to the repair,] and that the other side of the same part of the said Highway adjoining to the Parish

See Plan.

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of *B.* lies within the Parish of *B.*, and is to be and of right ought to be repaired by the said Parish of *B.* [*or by, &c.*], and stating that the repair of such part of the said Highway is very inconvenient to the Parishes aforesaid, and the want thereof detrimental to the public; and therefore praying that such part of the said Highway may be allotted and apportioned for the repair thereof by the Justices aforesaid to the said several Parishes of *A.* and *B.* [*or to, &c.*], in the manner directed by an Act passed in the 5th and 6th Year of the Reign of King William the IV., intituled, "An Act," &c. [*set out Title of Act.*]

(Signed)

I.S., one of the Surveyors of Parish of *A.*

The above application was made to us first above written.

the day and year

J.P.

K.P.

No. 13.

Summons to be subjoined to a Copy of the above Information.

County of } To the Surveyor [*or Surveyors*] of the Parish of *B.* in the said County, any or either
 } of them :

WHEREAS a certain information has been given to us, His Majesty's Justices of the Peace for the said County, at a Special Sessions for the Highways, by *I.S.*, the Surveyor [*or one of the Surveyors*] of the Parish of *A.* in the said County, a true copy whereof is above written : These are, in His Majesty's name, to summon you, any or either of you, to appear before us at
 in the said County on the day of to show cause (if any)
why an allotment and apportionment of the Highways therein mentioned should not be made according to the Provisions of the Act referred to in the said information. Hereof fail not.
Given under our hands this day of

J.P.

K.P.

No. 14.

Final Order and Adjudication to be filed with the Clerk of the Peace.

WHEREAS, &c.

1.—*State the original Application.*

2.—*The Summons.*

3.—*The appearance, and that the parties were heard, or their non-appearance.*

Now we, the Justices aforesaid, having fully heard and understood the Premises, do declare, adjudge, and order that the said Highway shall be divided in the following manner ; (that is to say), that at the distance of measuring from the place called *C.* there shall be erected certain posts or stones, *E.* and *F.*, on each side of the said Highway, and the whole of the said Highway from the place called *C.* to such posts or stones shall be from time to time and at all times hereafter repaired by the Parish of *A.* [*or by, &c.*], and the whole of the said Highway from such posts or stones to the place called *D.* shall from time to time and at all times hereafter be repaired by the Parish of *B.* [*or by, &c.*]

In witness whereof we have hereunto set our hands, this

day of

J.P. (L.S.)

K.P. (L.S.)

No. 15.

Notice from Surveyor to remove Nuisances.

To *C.D.* of

In pursuance of the directions given by an Act passed in the 5th and 6th Year of the Reign of King William the IV., intituled "An Act," &c., I *A.B.*, &c., the Surveyor [*or one of the Surveyors*] of the Parish of do hereby give you notice forthwith to remove the [filth, dung, ashes, rubbish, &c.] placed by you on a certain part of the King's Highway lying between and in the [Parish] of to the obstruction and annoyance of the said Highway.

Dated this

day of

A.B., &c.

No. 16.

Order of Two Justices for widening a Highway.

(to wit.) } We two of His Majesty's Justices of the Peace
 } for the said County acting within the [Hundred, &c.] of within
the said County, having, upon view, found that a certain part of the Highway between and in the [Parish, &c.] of in the said [Hundred], for
the length of yards or thereabouts, and particularly described in the plan here-
unto annexed, is for the greatest part thereof narrow, but may be conveniently enlarged and
widened by adding thereto, from the lands and grounds of and
of the length of yards or thereabouts, and of the breadth of feet

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or thereabouts, particularly described in the plan hereunto annexed, which we think will widen and enlarge the same, and be much more commodious to the public, do hereby order that the said Highway be widened and enlarged accordingly, and that the Surveyor [or Surveyors] of the [Parish, &c.] of where the said old Highway lies, do forthwith proceed to treat and make agreement with the said and for the recompence to be made for the said ground and for the making such ditches and fences as shall be necessary, in such manner, with such approbation, and by pursuing such measures and directions in all respects as are warranted and prescribed by the Statute made in the 5th and 6th Year of the Reign of King William the IV., intituled, "An Act," &c.; and in case such agreement shall be made as aforesaid, we do order an equal assessment, not exceeding the rate of in the pound, to be made, levied and collected upon all and every the parties liable to the payment of the Highway rate in the said [Parish, &c.] of and that the money arising thereupon be paid and applied in making such recompence and satisfaction as aforesaid, pursuant to the directions of the said Act.

A.B.
C.D.

No. 17.

Certificate from the said Justices to the Court of Quarter Sessions.

This is to be written upon the above Order when no Agreement can be made.

To the Justices of the Peace at their General Quarter Sessions to be held at in the said County, the day of one thousand eight hundred and

We, the within named A.B. and C.D. do hereby certify to the said Court of Quarter Sessions, that we made and signed the within Order, and that with our approbation and by our direction the said Surveyor [or Surveyors] has [or have] treated with the said and for the said lands required for the purposes aforesaid, but was not able to make any agreement for that purpose with them or either of them, and that he tendered to the said the sum of and to the said the sum of as a recompence for the said ground, and for the making the said ditches and fences, which he [or they and each of them] refused to receive.

A.B.
C.D.

No. 18.

Consent from the Owner of the Land through which a new Highway is proposed to be made.

I A.B. of in the County of being the Owner of the lands described in the Plan hereunto annexed, through which part of a certain Highway lying between and is intended to be diverted and turned, in consideration of the sum of to be paid to me for the said land and soil thereof, do hereby consent to the making and continuing such new Highway through my said lands.

Given under my hand this day of one thousand eight hundred and

No. 19

Form of Notice of Diverting, &c., Highway.

Notice is hereby given, that on the day of next application will be made to His Majesty's Justices of the Peace assembled at Quarter Sessions in and for the County of at for an Order for [if the Order be for turning, diverting, and stopping up, &c., here to state it and describe the road ordered to be turned, diverted and stopped up; if the Order be for stopping up a useless road here to state it, and describe the road ordered to be stopped up;] and that the certificate of 2 Justices having viewed the same, &c., with the plan of the old and proposed New highway, will be lodged with the Clerk of the Peace for the said County on the day of next.

A.B. } Surveyor [or Surveyors] of the Parish
C.D., &c. } of

No. 20.

Summons for any Person or Persons to attend a Justice or Justices.

To A.B.

{ WHEREAS complaint and information hath been made upon Oath before me, C.D., one (to wit.) of His Majesty's Justices of the Peace for the said [County, &c.] by E.F. of that, &c. [here state the nature and circumstances of the case as far as it shall be necessary to show the offence, and to bring it within the authority of the Justice; and in doing that follow the words of the Act as near as may be]: These are therefore to require you personally to appear before me [or the Justices to be assembled at their Petty Sessions (or Special Sessions for the Highways)] to be holden at in the said County, &c.] on the day of next, at the hour of in the noon, to answer to the said complaint and information made by the said E.F., who is likewise directed to be then and there present to make good the same. Herein fail not.

Given under my hand, this day of

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No. 21.

Information.

(to wit.) } Be it remembered, that on the day of A.B. of
 } in the said County informeth and maketh oath before me one
of His Majesty's Justices of the Peace for the said County, that of
in the said County [*here describe the offence, with the time and place, and follow the words of the*
Act as near as may be, contrary to the Statute in the 5th and 6th Year of the Reign of His
Majesty King William the IV., intituled "An Act," &c. [*here set out Title of Act*], which hath
imposed a forfeiture for the said offence.

Taken and sworn, the day of before me,

No. 22.

Form of Conviction.

(to wit.) } Be it remembered, that on the _____ day of _____ in the year of
our Lord _____ at _____ in the County aforesaid, A.B. came
before us _____ of His Majesty's Justices of the Peace for the said County, and informed
us that E.F. of _____ on the _____ day of _____ now last past, at
_____ in the said County, did [*set forth the fact in the manner described by the Act*],
whereupon the said E.F. after being duly summoned to answer the said charge, appeared before
us _____ on the _____ day of _____ in the said County, and having
heard the charge alleged against him, declared that he was not guilty of the said offence ; but
the same being fully proved upon the oath of G.H. a credible witness, it manifestly appears to us
the said Justices that he the said E.F. is guilty of the offence charged upon him in the said information : It is therefore considered and adjudged by us the said Justices that the said E.F. be convicted,
and we do hereby convict him of the offence aforesaid ; and we do hereby declare and
adjudge that he the said E.F. hath forfeited the sum of _____ of lawful money of
Great Britain for the offence aforesaid, to be distributed as the law directs, according to the form
of the Statute in that case made and provided. Given, &c.

[After the words "being duly summoned to answer the said charge," insert "did not appear before us pursuant to the said summons," or "did neglect and refuse to make any defence against the said charge;" but the same being fully proved, &c., as before.]

[After the words "charge alleged against him," insert "acknowledged and voluntarily confessed the same to be true ; " and it manifestly appears to us the said Justices, &c., as above.]

This is to be inserted when the party refuses to appear upon the summons.

This is to be inserted when the party accused confesses the charge.

No. 23.

Warrant to Distrain for the Forfeiture.

(to wit). } To the Constable [Headborough or Tithingman] of

WHEREAS *A.B.* of _____ in the said County [*Yeomen, &c.*] is this day convicted before us, 2 of His Majesty's Justices of the Peace in and for the said County, upon the oath of *G.H.* a credible witness, for that the said *A.B.* hath [*here set forth the offence, describing it particularly in the words of the Act, as near as may be*], contrary to the Statute in that case made and provided; by reason whereof the said *A.B.* hath forfeited the sum of _____ to be distributed as herein is mentioned, which he hath refused to pay : These are therefore in His Majesty's name to command you to levy the said sum of _____ by distress of the goods and chattels of him the said *A.B.*; and if within the space of 4 days next after such distress by you taken the said sum of _____ together with the reasonable charges of taking and keeping the same shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale that you do pay one half of the said sum of _____ to *E.F.* of _____ who informed me of the offence, and the other half of the said sum of _____

to I.K., the Surveyor of the Parish [Township or Place] where the said offence [neglect or default] happened, to be employed towards the repair of the said Highways, returning the overplus, upon demand, to him the said A.B., the reasonable charges of taking, keeping, and selling the said distress being first deducted; and if sufficient distress cannot be found of the goods and chattels of the said A.B. whereon to levy the said sum of _____ that then you certify the same to us, together with this warrant.

Given under our hands the

day of

C.D.

E.F.

This is to be varied according to the Act in each particular case.

No. 24.

Return of the Constable to be made upon the Warrant of Distress when there are no Effects.

I, A.B. Constable of the [Parish, &c.] of _____ in the County of _____ do hereby certify and make oath, that by virtue of this Warrant I have made diligent search for the goods of the within-named _____ and that I can find no sufficient goods whereon to levy the within sum of _____

As witness my hand, the

day of

A.B.

Sworn before me, the day and year, &c.

C.D.

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[5 & 6 WILL. IV.]

Highways.

[C. 50.]

No. 25.

Commitment for Want of Distress.

{ To the [Constable] of in the said County and to the Keeper of the Common
(to wit.) } Gaol [or House of Correction] at in the said County.
WHEREAS A.B. of in the said County, yeoman, was on the day of
convicted before us, 2 of His Majesty's Justices of the Peace in and for the said
County upon the oath of E.F. a credible witness, for that he the said A.B. [here set forth the
offence], contrary to the Statute made in the 5th and 6th year of the Reign of King William the
IV., intituled, "An Act," &c. [here set out Title of Act], by reason whereof the said A.B. hath
forfeited the sum of : And whereas on the day of
in the year aforesaid we did issue our Warrant to the [Constable] of to levy the
said sum of by distress and sale of the goods and chattels of him the said A.B.
and to distribute the same according to the directions of the said Statute : And whereas it duly
appears to us upon the oath of the said [Constable] that the said [Constable] hath used his best
endeavours to levy the said sum on the goods and chattels of the said A.B. as aforesaid, but that
no sufficient distress can be had whereon to levy the same : These are therefore to command you
the said [Constable] of aforesaid to apprehend the said A.B., and him safely convey
to the Common Gaol [or House of Correction] at in the said County, and there
deliver him to the keeper thereof, together with this precept ; and we do hereby also command you
the said keeper to receive and keep in your custody, and to keep to hard labour, the said A.B. for
the space of unless the said sum shall be sooner paid, pursuant to the said convic-
tion and Warrant ; and for so doing this shall be your sufficient Warrant.
Given under our hands the day of in the year of our Lord

C.D.
E.F.

A.D. 1839.

[2 & 3 VICT.]

Highways Amendment.

[C. 45.]



2 & 3 VICT., c. 45.

Revised
Statutes,
vol. viii., p. 441.

***An Act to amend an Act of the 5th and 6th years
of the Reign of His late Majesty King William
the 4th, relating to Highways.***

(17th August, 1839.)

5 & 6 WILL. IV.,
50, § 71.

§ 112.

WHEREAS by an Act passed in the Session of Parliament holden in the 5th and 6th years of
the Reign of his late Majesty King William IV., intituled "An Act to consolidate and
amend the Laws relating to Highways in that part of Great Britain called England," it is
amongst other things by the said Act enacted, that whenever a Railroad shall cross any Highway
for carts or carriages the Proprietors of the said Railroad shall make and maintain good and
sufficient gates at each of the said crossings, and shall employ good and proper persons to attend
to the opening and shutting of such gates, so that the persons, carts, or carriages passing along
such road shall not be exposed to any danger or damage by the passing of any carriages or
engines along the said Railroad, and any complaint for any neglect in respect of the said gates
shall be made within one month after the said neglect to one Justice, who may summon the party
so complained against to appear before the Justices at their next Special Sessions for the
Highways, who shall hear and decide upon the said complaint, and the Proprietor so offending
shall forfeit any sum not exceeding £5 : And whereas it is also by the said Act further enacted,
that nothing in this Act contained shall apply to any Turnpike Roads, except where expressly
mentioned, or to any roads, bridges, carriageways, cartways, horseways, bridleways, footways,
causeways, churchyards, or pavements, which now are or may hereafter be paved, repaired, or
cleansed, broken up or diverted, under or by virtue of the Provisions of any Local or Personal Act
or Acts of Parliament : And whereas it is deemed expedient to amend the said Provisions in the
said Act, and to extend the same to Turnpike Roads in England : Be it therefore enacted, &c.

Proprietors of
Railroad to
maintain gates
where any Rail-
road crosses the
Highway, &c.

Wherever a Railroad crosses or shall hereafter cross any Turnpike Road or any Highway or
Statute Labour Road for carts or carriages in Great Britain, the proprietors or directors of the
company of proprietors of the said Railroad shall make and maintain good and sufficient gates
across each end of such Turnpike or other Road as aforesaid at each of the said crossings, and
shall employ good and proper persons to open and shut such gates, so that the persons, carts, or

Part I.—STATUTES.

[2 & 3 VICT.]

Highways Amendment.

[C. 45.]

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carriages passing along such Turnpike or Highway shall not be exposed to any danger or damage by the passing of any carriages or engines along the said Railroad ;

And any complaint for any neglect in respect of the said gates shall be made within one calendar month after the said neglect to any Justice of the Peace, who may summon the party so complained against to appear before them or him at the next Petty Session or Court to be holden for the District or Division within which such gates are situate, who shall hear and decide upon the said complaint ;

And the Proprietor or Director so offending shall for each and every day of such neglect forfeit any sum not exceeding £5, together with such costs as to the Justices before whom the conviction shall take place shall seem fit.

2. The penalties by this Act imposed, and the costs to be allowed and ordered by the authority of this Act, shall in England be recovered and applied in the same manner as any penalties and costs under the said Act

Recovery and application of penalties.

* * * * *

[4 & 5 VICT.]

County Bridges.

[C. 49.]

A.D. 1841.



4 & 5 VICT., c. 49.

An Act to provide for repairing, improving, and rebuilding County Bridges.^(a)

Revised Statutes, vol. viii., p. 941.

(21st June, 1841.)

WHEREAS the expense of maintaining, altering, widening, repairing, improving, and rebuilding County Bridges, and approaches thereto, is in some instances considerable, and it is expedient that the money required for that purpose should, in certain cases, be borrowed on security of the County Rate : Be it therefore enacted, &c.

When it shall appear to the Justices assembled at any general or Quarter Sessions of the Peace to be holden at any time after the passing of this Act in any County, Riding, or Division in England or Wales, that the amount of any estimate approved by the said Justices for the upholding, maintaining, supporting, altering, widening, repairing, improving, or rebuilding of any County Bridge or Bridges, or the approaches thereto, or the land arches connected therewith, which any County is legally bound to repair or maintain, shall exceed one-fourth of the amount of the ordinary annual assessment for the Rate of any County, Riding, or Division (such ordinary assessment to be taken on an average of such Rate for the last 7 years preceding), it shall be lawful for the Justices in Quarter Sessions assembled from time to time to borrow and take up on mortgage of such Rate, by instrument in the form contained in the Schedule to this Act annexed marked (A.), or to the like effect, any sum of money not exceeding the amount of such estimate, in sums not less than £50 each, at interest, as to the said Justices shall appear necessary and expedient for the purposes aforesaid, and to secure every such sum of money so borrowed upon the credit of the said Rate ;

Justices may borrow money for repairing County Bridges on the credit of the County Rate.

And it shall and may be lawful for the Justices so assembled and they are hereby authorised to treat and agree with any person for the loan of any such sums of money, and by their Order to confirm every such agreement ;

And every such agreement, signed by the Chairman and 2 or more other Justices present at the time of making such Order, shall be and the same is hereby declared to be effectual for securing every sum of money so advanced, with interest thereon, to the person or persons advancing the same, on such terms as in and by such agreement shall be stipulated ;

And copies or extracts of all such agreements shall be kept by the Clerk of the Peace ;

And it shall and may be lawful for every person who shall be entitled to the money thereby secured, and such person is hereby empowered, by endorsing his name on the back of such security, to transfer the same, and his right to the principal money and interest thereby secured, unto any other person ; and every such assignee may in like manner transfer the same again, and so *toties quoties* ;

And the person to whom such security, or any such assignment thereof, shall be made, and his executors, administrators, and assigns, shall be creditors upon the said Rate in an equal degree one with another, and shall not have any preference with respect to the priority of any monies so advanced.

(a) This Act is partly repealed so far as regards borrowing in the County of Middlesex by 8 & 9 Vict., 32, § 1.

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County Bridges.

[C. 49.]

A.D. 1841.

The County Rate may be charged with interest on money borrowed; repayment to be certain in 14 years.

2. It shall and may be lawful for the said Justices and they are hereby authorised and required to charge the Rate to be raised upon such County, Riding, or Division, not only with the interest of the money so borrowed, but also with the payment of such further sum as shall insure the payment of the whole of the sum borrowed within 14 years from the time of borrowing the same; And such sums shall be assessed on the County, Riding, or Division in such manner as County Rates are directed to be assessed under the laws in force for that purpose, and shall be paid and applied, under the direction of the Justices, in discharge of the interest and of so many of the principal sums on the said securities as such money will extend to discharge in each year, until the whole of the money for which such securities shall be made, and the interest thereof, shall be fully paid and discharged;

And the Justices shall and they are hereby required to fix one or more day or days in each year on which such payment shall be made, and shall make Orders for assessments in due time, so as to provide for the regular payment thereof;

And such Justices shall also and they are hereby required to appoint a proper person to keep an exact and regular account of all the receipts and payments under the authority of this Act, in a book or books, separate and apart from all other accounts, and the same to adjust and settle in such manner that it may easily be seen what interest is growing due, and what principal money has been discharged, and what remains due, and the books or book so adjusted and settled to deliver into Court at any General or Quarter Sessions to be held for such County, Riding, or Division;

And the Justices shall also and they are hereby required at every such Sessions carefully to inspect all such accounts, and to make Orders for carrying the purposes of this Act into execution, in such manner as to them shall seem meet;

And the Justices so assembled in Sessions as aforesaid shall direct in what Order such securities shall be discharged, by drawing lots or otherwise, as they shall think fit, taking care to discharge, in the first place, all such securities as shall bear the highest rate of interest.

3. The Justices shall not make any Order for the borrowing money upon mortgage of the Rate for any of the purposes aforesaid, unless a notice in writing of the intention to make the application, signed by 2 at least of the Justices usually acting in and for the Division within which the Bridge in question is situated, shall have been given to the Clerk of the Peace 4 weeks previous to the holding of the Sessions at which such application is intended to be made, and shall also have been published in the newspaper or newspapers in which notice of holding the Quarter Sessions is usually published, together with such last-mentioned notice.

4. An Act passed in the 6th year of the reign of his Majesty King George IV., intituled "An Act to enable Justices of the Peace in England, in certain cases, to borrow money on mortgage of the Rate of the County, Riding, or place for which such Justices shall be then acting," and the several Clauses, Powers, and Provisions in the said recited Act contained relating to the paying off of any debt or debts, and the borrowing of any money for such purpose, shall and may be applied in the paying off any money borrowed under the provisions or for the purposes of this Act, as fully and effectually as if such Clauses, Powers, and Provisions were repeated and re-enacted in this Act.

Notice to be given of proposal to borrow on mortgage of the County Rate

Powers of 6 Geo. IV., 40, applied to this Act.

SCHEDULE TO WHICH THIS ACT REFERS.

(A.)

Form of Mortgage and Charge upon the County Rate for securing Money borrowed.

WE, *A. B.*, one of her Majesty's Justices of the Peace and Chairman of the Court of Quarter Sessions of the Peace holden at _____ on the _____ day of _____ for the County, *et cætera* of _____ [*as the case may be*], *C. D.* and *E. F.* Esquires, two other of her Majesty's Justices of the Peace acting for the said County, *et cætera*, and assembled in the said Court, in pursuance of the powers to us given by an Act passed in the 4th year of the reign of Her Majesty Queen Victoria, intituled, *et cætera* [*insert the Title of this Act*], do hereby in open Court mortgage and charge all the Rates to be raised within the said County, *et cætera* [*as the case may be*], under the description of County Rates, by the Laws now in being, with the payment of the sum of _____ which *G. H.* of _____ hath proposed and agreed to lend, and hath now actually advanced and paid, towards defraying the expenses of upholding, maintaining, supporting, altering, widening, repairing, improving, or rebuilding [*as the case may be*] a certain County Bridge at _____ and _____ [*as the case may be*] in the said County, and the approaches thereto [*as the case may be*] in the said County, *et cætera*, and we do hereby assign the same unto the said *G. H.*, his executors, administrators, and assigns, for securing the payment of the sum of _____ and interest for the same after the rate of _____ per centum per annum, and do order the Treasurer for the said County, *et cætera*, or other person [*as the case may be*], to pay the interest of the said sum of _____ half-yearly as the same shall become due, until the principal shall be discharged, pursuant to the directions of the said Act.

Part I.—STATUTES.

[4 & 5 VICT.]

Highways Amendment.

[C. 51.]

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4 & 5 VICT., c. 51.

An Act to amend an Act of the 3rd year of King George the 4th, for regulating Turnpike Roads in England, and also an Act of the 5th and 6th years of King William the 4th, for consolidating the Laws relating to Highways in England.
(21st June, 1841.)

Revised
Statutes,
vol. viii., p. 944.

WHEREAS by an Act passed in the 3rd year of the reign of King George IV., intituled "An Act to amend the general Laws now in being for the regulating Turnpike Roads in that part of Great Britain called England," it is amongst other thing enacted, "that it shall not be lawful for any Surveyor, or any other person or persons acting under the authority of this Act, to dig, gather, get, take, or carry away any materials for making or repairing any Turnpike Road, or for other such purpose or purposes as aforesaid, out of or from any inclosed land or ground, until notice in writing, signed by the Surveyor, shall have been given to the owner or owners of the premises from which such materials are intended to be taken, or his or her known agent, or to the occupiers of the premises from which such materials are intended to be taken, or left at the house or last or usual place of abode of such owner or occupier, to appear before any 2 or more Justices of the Peace acting in and for the County, Liberty or place where the lands from whence such materials are intended to be taken shall be to show cause why such materials shall not be had therefrom; and in case such owner, agent, or occupier shall attend pursuant to such notice, but shall not show sufficient cause to the contrary, such Justices shall, if they think proper, authorise such Surveyor or other person to dig, get, gather, take, or carry away such materials, at such time or times as to such Justices shall seem proper; and if such owner, agent, or occupier shall neglect or refuse to appear, by himself or herself, or his or her agent, the said Justices shall and may (upon proof on oath of the service of such notice, and which oath they are hereby empowered to administer), make such Order therein as they shall think fit, as fully and effectually, to all intents and purposes, as if such owner or occupier, or his or her agent, had attended:" And whereas by an Act passed in the Session held in the 5th and 6th years of the reign of King William IV., intituled "An Act to consolidate and amend the Laws relating to Highways in that part of Great Britain called England," it is amongst other things enacted, "that it shall not be lawful for any Surveyor, or any other person acting under the authority of this Act, to dig, gather, get, take, or carry away any materials for making or repairing any Highway out of or from any inclosed land or ground, until one calendar month's notice in writing, signed by the Surveyor, shall have been given to the owner of the premises from which such materials are intended to be taken, or to his known agent, and to the occupier of the premises from which such materials are intended to be taken, or left at the house or last or usual place of abode of such owner or agent, and also of such occupier, to appear before the Justices at a Special Sessions for the Highways, to show cause why such materials shall not be had therefrom; and in case such owner, agent, or occupier shall attend pursuant to such notice, but shall not show sufficient cause to the contrary, such Justices shall, if they think proper, authorise such Surveyor or other person to dig, get, gather, take, and carry away such materials, at such time or times as to such Justices shall seem proper; and if such owner, agent, or occupier shall neglect or refuse to appear, by himself or his agent, the said Justices shall and may, upon proof on oath of the service of such notice, make such Order therein as they shall think fit, as fully and effectually, to all intents and purposes, as if such owner or occupier, or his agent, had attended:" And whereas doubts have been entertained whether the words "inclosed land or ground," used in the said recited Acts, include land being the private and exclusive property of any person or persons, but not being actually inclosed with a fence: And whereas large portions of such land are occupied for agricultural purposes by the owners or occupiers thereof respectively, without the same being inclosed with any fence: and it is expedient that the materials referred to in the said recited Acts should not be taken from any such land without previous notice being given to the owners or occupiers thereof, and the authority herein-after mentioned obtained for that purpose: Be it therefore enacted, &c.

3 Geo. IV., 126,
§ 88.

5 & 6 WILL. IV.,
50, § 58.

From and after the passing of this Act all lands and grounds which shall be in the exclusive occupation of one or more persons for agricultural purposes shall be deemed and taken to be inclosed lands or grounds within the meaning of the said recited Acts, although the same may not be separated from any adjoining lands or grounds of other persons, or from the highway, by any fence or other inclosure.

Lands in exclusive occupation for agricultural purposes to be deemed inclosed lands.

Book I.—HIGHWAYS AND BRIDGES.

44

A.D. 1841.

[4 & 5 VICT.]

Highway Rates in Aid.

[C. 59.]



4 & 5 VICT., c. 59.

*Revised
Statutes,
vol. viii., p. 946.*

An Act to authorise for one year, and until the end of the then next Session of Parliament, the application of a portion of the Highway Rates to Turnpike Roads in certain cases.

(22nd June, 1841.)

5 & 6 WILL. IV.
50.

WHEREAS an Act was passed in the 5th and 6th years of His late Majesty, intituled "An Act to consolidate and amend the Laws relating to Highways in that part of Great Britain called England," whereby divers Statutes passed in the reign of His late Majesty King George III., relating to the performance of Statute duty, were repealed, and Statute duty was thereby altogether abolished: And whereas the revenues of some Turnpike Roads are so unequal to the charge and maintenance of such roads, after paying the interest and principal of the sums due upon mortgage of the tolls thereof, when deprived of the aid heretofore derived from Statute duty, that it is necessary that some additional provision be made for such roads, for a limited period: Be it therefore enacted, &c.

Justices at
Special Sessions
for Highways
on proof of the
deficiency of the
funds, &c., of
Turnpike Trusts,
may order a
subsidy from
the Highway
Rate.

It shall be lawful for the Justices at any Special Sessions for the Highways holden after the passing of this Act, upon information exhibited before them by the Clerk or Treasurer of any Turnpike Trust that the funds of the said Trust are insufficient for the repairs of the Turnpike Roads within any Parish, notice in writing of such intended Information having been previously given on the part of such Clerk or Treasurer to the Parish Surveyor 21 days at least before such Special Sessions, to examine the state of the revenues and debts of such Turnpike Trusts, and to inquire into the state and condition of the repairs of the Roads within the same, and also to ascertain the length of the Roads, including Turnpike Roads, within such Parish, and how much of such Road is Turnpike Road,

And if after such examination it shall appear to the said Justices necessary or expedient, for the purposes of any Turnpike Road, so to do, then to adjudge and order what portion, if any, of the Rate or assessment levied or to be levied by virtue of the said recited Act shall be paid by the said Parish Surveyor, and at what time or times, to the said Commissioners or Trustees, or to their Treasurer or other officers appointed by them on that behalf, such money to be wholly laid out in the actual repairs of such part of such Turnpike Road as lies within the Parish from which it was received.

If Surveyor
neglects to pay,
portion of Rate
may be levied
by distress.

2. If any such Parish Surveyor shall refuse or neglect to pay over such portion of the said Rate or assessment at the time or times and in the manner mentioned in the Order of the said Justices, the same shall and may be levied upon the goods and chattels of such Surveyor in such manner as penalties and forfeitures are by the said recited Act authorised to be levied.

Appeal to
Quarter Sessions

If any person shall think himself aggrieved by any Order, Judgment, or determination made or by any matter or thing done by any Justices of the Peace at any such Special Sessions, in pursuance of this Act, such person shall be at liberty to make his complaint thereof by appeal to the Justices of the Peace at the next general or Quarter Sessions of the Peace to be held for the County, Riding, Division, or place wherein the cause of such complaint shall arise, such appellant first giving to such Justices 10 days notice in writing of the grounds of such appeal, within 6 days after such Order, Judgment, or determination shall be so made or given as aforesaid, who are hereby required, within 48 hours after the receipt of such notice, to return all proceedings whatever had before them respectively touching the matter of such appeal to the said Justices at the General or Quarter Sessions aforesaid;

And that in case of such appeal the said Justices at the said Quarter Sessions, upon due proof of such notice and statement having been given as aforesaid, shall hear and determine such appeal;

And the said Justices at the said Quarter Sessions shall have power to award such costs to the parties appealing or appealed against as they the said Justices shall think proper, such costs to be levied and recovered in the same manner as any penalties or forfeitures are recoverable under the said recited Act;

And no proceeding to be had or taken in pursuance of this Act shall be quashed or vacated for want of form.

Provided always, that in case there shall not be time to give such notice as aforesaid before the next Sessions to be holden after such Order, determination, or Judgment, then and in every such case such appeal may be made to the Justices at the next following Sessions, who shall proceed to determine such appeal in manner aforesaid:

Provided always, that it shall not be lawful for the appellant to be heard in support of such appeal, unless such notice and statement shall have been so given as aforesaid

Part I.—STATUTES.

[4 & 5 VICT.]

Highway Rates in Aid.

[C. 59.]

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A.D. 1841.

4. In construing this Act the word "Parish" shall be taken to mean and include Parish, Township, Tithing, Rape, Vill, Wapentake, Division, City, Borough, Liberty, Market Town, Franchise, Hamlet, Precinct, Chapelry, or other place or district maintaining its own Highways.

5. This Act shall extend only to England.

6. This Act shall continue and be in force for one year from the passing thereof, and from thence until the end of the then next Session of Parliament.^(a)

Interpretation Clause.

Extent of Act.

Duration of Act

* * * * *

[8 & 9 VICT.]

Highways Amendment.

[C. 71.]

A.D. 1845.



8 & 9 VICT., c. 71.

An Act to extend certain Provisions in the Act for consolidating and amending the Laws relating to Highways in England.

(31st July, 1845.)

Revised Statutes, vol. IX., p. 684.

WHEREAS by an Act passed in the 6th year of the reign of His late Majesty, intituled "An Act to consolidate and amend the Laws relating to Highways in that part of Great Britain called England," after reciting that under Acts of Parliament theretofore made, and which might thereafter be made, for the inclosing of waste land, parcels of land had been and might be expressly allotted to Parishes, or to the Surveyor of the Highways, for the purpose of obtaining materials for the repair of the Highways in such Parish, and the materials in such parcels of land had been and might be exhausted, it was enacted, that in such cases it should and might be lawful for the Surveyor of such Parish for the time being, by and with the consent of the Vestry, and he was thereby authorised and required, with the consent in writing of the Justices of the Peace at a Special Sessions for the Highways, to sell and convey to some person whose lands adjoin thereto, or, if he should refuse to purchase, to any other person, the said parcels of land from which the said materials had been so exhausted as aforesaid, at and for such price as the said Justices might deem fair and reasonable, and with the money arising therefrom, and with such consent as aforesaid, to purchase other lands in lieu thereof: And whereas it is desirable to extend the provisions herein-before recited to other cases than those mentioned in the said Act: Be it enacted, &c.

5 & 6 WILL. IV., 50, § 46.

From and after the passing of this Act, the recited Act, and all the provisions therein contained, shall apply and extend not only to the lands in the said Act specified, but to all lands belonging or which hereafter may belong to Parishes, or to the Surveyor of the Highways, for the purposes aforesaid, which have been or hereafter shall be lawfully used for the purpose of obtaining materials for the repair of the Highways in such Parish, the materials in which lands have been or hereafter may be exhausted.

Extending Provisions of recited Act.

2. The said Act and this Act shall be construed together as one Act.

Recited Act and this Act to be as one.

* * * * *

(a) Continued to the present time by various Continuance Acts.

Book I.—HIGHWAYS AND BRIDGES.

46

A.D. 1850.

[13 & 14 VICT.]

Borough Bridges.

[C. 64.]



13 & 14 VICT., c. 64.

Revised
Statutes,
vol. x., p. 998.

An Act to provide for more effectually maintaining, repairing, improving, and rebuilding Bridges in Cities and Boroughs.

(14th August, 1850.)

WHEREAS it is expedient that all Bridges in any City or Borough, which such City or Borough, and not the County in which such City or Borough is situate, is legally bound to maintain and repair, should be under the sole management and control of the Council of such City or Borough : And whereas it is also expedient that such Council of such City or Borough should in certain cases be empowered to borrow on the security of the Rate of such City or Borough the money which may from time to time be required for the purpose of maintaining, altering, widening, repairing, improving, and rebuilding such Bridges : Be it therefore enacted, &c.

Repairing and
rebuilding of
Bridges within
limits of Corporate Cities or
Boroughs.

5 & 6 WILL. IV.,
76.

Councils may
direct payment
of money out of
Rates.

Council may
borrow money
for maintaining
or rebuilding
Bridges.

From and after the passing of this Act every Bridge which is either wholly or in part within the limits of any City or Borough in which there is or shall be a Body Corporate, of Mayor, Aldermen, and Burgesses, under the provisions of an Act passed in the 6th year of the reign of His late Majesty, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales," or of any charter granted in pursuance of that or of any subsequent Act, and which Bridge such City or Borough, and not the County in which such City or Borough is situate, is legally bound to maintain or repair, shall, as to the whole of such Bridge, if the same is wholly within the limits of such City or Borough, or as to such part as is within the limits of such City or Borough, if part only is within such limits, be maintained, altered, widened, repaired, improved, or rebuilt under the sole management and control of the Council of such City or Borough.

2. For the purposes of this Act such Council of any such City or Borough, at any meeting of such Council, shall have and may exercise all the powers which the Justices of the Peace of any County at their General or Quarter Session of the Peace, or at any other time, now have and may exercise with respect to any County Bridge, or as near thereto as the nature of the case will admit ;

And that it shall and may be lawful for such Council, and they are hereby empowered, to order and direct that such sum or sums of money as shall be necessary for the purposes aforesaid shall be paid, out of the Rate of such City or Borough, by the Treasurer for the time being of such City or Borough, at such times and in such manner as to the said Council shall seem fit :

Provided always, that it shall not be necessary for the Council of any such City or Borough to cause any notice to be given or published in any newspaper in any case in which notice is required to be given or published with respect to County Bridges.

3. When and so often as it shall appear to the Council of any such City or Borough, at any meeting of such Council holden at any time after the passing of this Act, that the amount of any estimate approved of by such Council for the maintaining, altering, widening, repairing, improving, or rebuilding of any such Bridge or Bridges, or any part thereof, or the approaches thereto, which any such City or Borough, and not the County in which such City or Borough is situate, is legally bound to maintain and repair, shall exceed the sum of £150, it shall and may be lawful for such Council and they are hereby empowered, after having first entered a statement of the amount of such estimate in the Minute Book of the Council, to borrow and take up on mortgage of the Rate of such City or Borough, by an instrument in the form contained in the Schedule to this Act annexed marked (A.), or to the like effect, any sum or sums of money not exceeding the amount of such estimate, in sums of not less than £50 each, at interest, as to the said Council shall appear necessary and expedient, for the purposes aforesaid or any of them, and to secure every such sum of money so borrowed upon the credit of the said Rate ;

And it shall and may be lawful for such Council at any such meeting, and they are hereby authorised and empowered, to treat and agree with any person or persons for the loan of any such sum or sums of money ;

And every such instrument under the hand of the Mayor or other member of the Council who shall happen to preside at any such meeting as aforesaid, and under the Corporate Seal of the said City or Borough, shall be and the same is hereby declared to be effectual for securing the money therein expressed to be advanced, with interest thereon, to the person or persons advancing the same, on such terms as in and by such instrument shall be stipulated ;

And a copy of every such instrument shall be kept by the Town Clerk of any such City or Borough as aforesaid ;

And it shall and may be lawful for any person or persons who shall be entitled to the money thereby secured, and for his, her, or their executors or administrators, and such person or persons, and his, her, or their executors or administrators, are hereby empowered, by endorsing his, her, or their name or names on the back of any such instrument, and by giving notice of such endorsement to the Town Clerk for the time being, to transfer the same, and his, her, or their right to the principal money and interest thereby secured, unto any person or persons ;

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[13 & 14 VICT.]

Borough Bridges.

[C. 64.]

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A.D. 1850.

And every such assignee or assignees, his, her, or their executors or administrators, may in like manner transfer the same again, and so *toties quoties*;

And the person or persons to whom any such transfer thereof shall be made, and his, her, or their executors, administrators, or assigns, shall be a creditor or creditors upon the said Rate in an equal degree one with another, and shall not have any preference with respect to the priority of any monies so advanced as aforesaid.

4. It shall and may be lawful for such Council and they are hereby authorised and required to charge the Rate to be raised in such City or Borough, not only with the interest of the money so borrowed, but also with the payment of such further sum as shall ensure the payment of the whole of the sum borrowed within 14 years from the time of borrowing the same, and such sums shall be assessed on such City or Borough in such manner as Borough Rates are directed to be assessed under the Laws in force for that purpose, and shall be paid and applied, under the direction of such Council, in discharge of the interest, and of so many of the principal sums on the said securities as such money will extend to discharge in each year, until the whole of the money for which such securities shall be made, and the interest thereof, shall be fully paid and discharged;

Interest on
moneys bor-
rowed to be a
charge upon the
Rates.

And the Council shall and they are hereby required to fix one or more day or days in each year on which such payment shall be made, and shall give directions for assessments to be made in due time, so as to provide for the regular payment thereof;

And the Treasurer of such City or Borough shall and he is hereby required to keep an exact and regular account of all the receipts and payments under the authority of this Act, in a book or books, separate and apart from all other accounts, and the same to adjust and settle in such manner that it may easily be seen what interest is growing due and what principal money has been discharged, and what remains due, and the books or book so adjusted and settled to lay before the Council at every quarterly meeting of such Council;

And such Council shall also and they are hereby required, at every such quarterly meeting, carefully to inspect all such accounts, and to give such orders and directions for carrying the purposes of this Act into execution, in such manner as to them shall seem meet;

And such Council at such quarterly meeting as aforesaid shall direct in what order such securities shall be discharged, by drawing lots or otherwise, as they shall think fit:

Provided always, that they shall in the first place discharge all such securities as shall bear the highest rate of interest.

5. And whereas by the extension of the boundaries of certain Boroughs under the provision of the Act of the 5th and 6th year of King William IV., intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales," certain Bridges and parts of Bridges have been included within the boundaries of those Cities and Boroughs, and are thereby subject to the jurisdiction of such Cities or Boroughs, which Bridges before the passing of such Act were maintained as to the whole or such parts thereof as were within the limits of such Cities and Boroughs by the inhabitants thereof, and the remaining Bridges and parts of Bridges which were not situate within such limits were maintained by the inhabitants of the Counties or Ridings respectively adjoining thereto: And whereas doubts have arisen respecting the future repairs and maintenance of such Bridges:

Repair of
Bridges within
Municipal
Boroughs.
5 & 6 WILL. IV.,
76.

Every Bridge which is wholly or in part included within the boundary of any such City or Borough the inhabitants whereof, before the passing of the said recited Act, were by prescription or otherwise liable to and did maintain the Bridges and parts of Bridges within their respective Cities and Boroughs, shall as to the whole of such Bridges, if the same is wholly within the limits of such City or Borough, or as to such part as is within the limits of such City or Borough, if part only is within such limits, be maintained, altered, widened, and repaired, improved or rebuilt, under the sole management and control of the Council of such City or Borough.

* * * * *

THE SCHEDULE TO WHICH THIS ACT REFERS.

(A.)

Form of Mortgage and Charge upon the Borough Rate for securing Money borrowed.

I A.B. [Mayor, Alderman, or Councillor, as the case may be,] of the [City or Borough of
], and Chairman of a certain Meeting of the Council of the said [City or Borough of
, as the case may be,] duly holden at
day of
in the year of our Lord
in pursuance of the powers to me given by an Act passed in the
year of the reign of Her Majesty Queen Victoria, intituled [*insert title of Act*], do hereby
mortgage and charge all the Rates to be raised within the said [City or Borough] under the
description of Borough Rates by the Laws now in being with the payment of the sum of
pounds, which C.D. of
hath proposed and agreed to
lend, and hath now actually advanced and paid, towards defraying the expenses of [maintaining,
altering, widening, repairing, improving, or rebuilding, as the case may be,] a certain Bridge
called [or] certain Bridges called
and
within the said [City or Borough], and the approaches thereto [as the case may be]; and I do
hereby assign the same unto the said C.D., his Executors, Administrators, and Assigns, for securing
the payment of the sum of
pounds, and interest for the same after the
Rate of
pounds per centum per annum, and do order the Treasurer for the
said [City or Borough] to pay the interest of the said sum of
after the Rate
aforesaid, half-yearly as the same shall become due, until the principal shall be discharged,
pursuant to the directions of the said Act.

Book I.—HIGHWAYS AND BRIDGES.

48

A.D. 1860.

[23 & 24 VICT.]

South Wales Highways.

[C. 68.]



23 & 24 VICT., c. 68.

*Revised
Statutes,
vol. xiii., p. 628.*

An Act for the better Management and Control of the Highways in South Wales.^(a)

(6th August 1860.)

14 & 15 Vict.,
16.

Recited Act
repealed.

Districts may be
altered from
time to time.

Power to
County Roads
Board to ap-
point and dis-
miss Surveyors.

Transfer of
property and
powers of exist-
ing Surveyors
to Boards.

WHEREAS an Act was passed in the Session holden in the 14th and 15th years of Her Majesty, chapter 16, for the better management and control of the Highways in South Wales: And whereas in pursuance of the said Act the six counties of South Wales have been divided by the County Roads Boards of their respective counties into Districts for the better repair and maintenance of the Highways: And whereas it is expedient that the said Act should be repealed and other provisions be made in lieu thereof: Be it therefore enacted, &c.

1. The said Act shall be and is hereby repealed: Provided that nothing in this Act, except as herein-after provided, shall in any way affect or alter the aforesaid Highway Districts, or the appointments of any officers, but such Districts shall remain for the purposes of this Act, and such officers shall respectively hold office on the like tenure as if appointed under this Act.

2. Provided also, that it shall be lawful for the said County Roads Boards of the several counties of South Wales respectively from time to time if they shall see occasion to alter the limits of any such District in their respective County either by consolidating the whole or any part of it with any other District, or by dividing it into one or more Districts;

And the Order by which such alteration is made shall within one month after the making thereof be published, together with a description or statement of the boundaries of such Districts, or of the Parishes comprised therein respectively, by advertisement in one or more of the newspapers circulating in the County in which the Order is made, and notice thereof shall be given to the Clerks of such districts as are affected thereby.

3. Every County Roads Board acting in and for each of the said counties respectively shall, by writing, upon which no stamp or other duty shall be payable, appoint one Surveyor for each District declared as aforesaid to overlook the management and repairs of the several Highway Districts in their County, and shall also determine the salaries to be paid to such Surveyors respectively;

And the Board may from time to time remove the said Surveyors, and so often as the said offices or any of them shall become vacant shall appoint other fit and proper persons for the same;

And the salaries of such Surveyors shall be paid out of the Highway Rate, and shall be, by an Order made by the County Roads Board, apportioned amongst and charged upon the Parishes within each respective District, in the same manner and in the same proportions as the County Rate shall be chargeable at the time the Order is made:

Provided nevertheless, that such District Surveyor shall not expend moneys levied in any one of the Parishes within his District, except for the use and benefit of the Parish in which it is so levied, unless with the consent of the inhabitants of such Parish in Vestry assembled, for the purpose of carrying on repairs or beneficial improvements for the common benefit of the Parishes aforesaid, and shall keep separate and distinct accounts for each Parish within his District, and such accounts shall specify the different sums and the persons to whom and by whom the same shall have been paid.

4. All land and property vested, or which, if this Act had not been passed, would have been vested, in any Surveyor of Highways of any Parish elected or appointed under the Act of the 5th and 6th years of King William IV., chapter 50, and all the powers of letting or otherwise disposing of any such land or property vested in, or which, if this Act had not been passed, would have been vested in or exercisable by such Surveyor, and all rents, or other income of land or property which such Surveyor is, or, if this Act had not been passed, would have been entitled to receive, shall, upon and after the ceasing under this Act of the powers of such Surveyor, be vested in and exercisable and received by the Highway Board of the district in which such Parish is comprised;

And all tools, materials, implements, matters, and things purchased or provided, or thereafter to be purchased or provided, for the use or repair of the Highways of any Parish or District, and the scrapings of such Highways, and all books, papers, writings, and accounts relating to such Highways, shall be vested in the Highway Board of the District in which the same are situate, and all land, chattels, and property whatsoever hereby transferred to any Highway Board shall be vested in such Board for the benefit of the Parish to which the same belongs, or to the repairs of the Highways of which the same, or the rents, income, and proceeds thereof, would have been applicable, and credit

(a) This Act is repealed as to certain specified parts of South Wales by the following Acts:—
28 & 29 Vict., 108, § 2 (Llanelly); 29 & 30

Vict., 79, § 1 (Briton Ferry); 30 & 31 Vict., 21, § 4 (Llanwunno portion of Mountain Ash).

Part I.—STATUTES.

[23 & 24 VICT.]

South Wales Highways.

[C. 68.]

49

A.D. 1880.

shall be given to such Parish for such rent, income, and proceeds accordingly, and in the case of any such chattels, belonging to or provided for any Parish which may be made available for the common use or benefit of the several Parishes within the District of such Highway Board, such Highway Board shall give such Parish credit for what they may consider the value thereof, as for so much money received in respect of such Parish.

5. The Surveyor of Highways of each District shall, subject to the control of the Highway Board for such District, maintain and keep in repair the Highways which the several Parishes in such District may be liable to repair, and for that purpose shall on behalf of the Highway Board make all necessary contracts for Highway materials and for cartage and other works for the repair of the Highways, and shall superintend the execution of all such works, and shall make all such payments as by the Highway Board may be ordered to be made by him, and keep true and particular accounts of all moneys received by him, and of the application thereof, and shall keep separate and detailed accounts of the expenditure in or on account of each Parish,

Duties of district Surveyor.

And shall at every ordinary meeting of the Highway Board produce his accounts for examination and allowance by the Board, and report to such Board such circumstances in relation to the state of the Highways in the District and the other matters aforesaid as may require the order or direction of the Board, and as to the progress or completion of all works which may have been ordered by the Board, and shall submit to the Board an estimate of the expense of any proposed work, and shall twice at the least in every year, or oftener if the Board direct, report in writing the state and condition of all Highways in the District.

6. The Surveyor of Highways of each District shall, except for the purpose of making, assessing, and levying Rates, and producing and verifying his accounts at Special Sessions, and except as herein otherwise provided, have all duties, powers, and responsibilities, as regards the Parishes in such District, of a Surveyor elected under the said Act of the 5th and 6th years of King William IV., chapter 50 ;

Powers and responsibilities of Surveyor.

And all Acts and Provisions not hereby repealed, applicable to such last-mentioned Surveyor, shall, save as herein otherwise provided, apply in like manner to a Surveyor of Highways of a District appointed under this Act, and all penalties and forfeitures or parts thereof payable to such Surveyor shall be paid by him to the Treasurer of the Highway Board, to the credit of the Parish in respect whereof the same are recovered :

Provided nevertheless, that such Surveyor shall in the exercise of such duties and powers act under the directions and control of the Highway Board, and shall be indemnified by such Board out of the moneys coming to the hands of their Treasurer in respect of all expenses and liabilities properly incurred by him.

7. The maintenance and repairs of the several Highways situate and being within the several Districts which have been or shall be hereafter formed shall, subject to the authority of the said County Roads Board, be under the care and management of Local Boards, to be styled Highway Boards, and which are and shall hereafter be constituted in manner following ;

Highways to be continued under the care and management of existing Boards.

That is to say, all persons who are now elected or who shall hereafter be elected Guardians of the Poor for the Parish or Parishes contained in such District during the period they are such Guardians, and all Her Majesty's Justices residing within or acting at any Petty Sessions within or holden for the District, shall constitute the Highway Board for such District, and such Justices shall not by reason of being members of such Highway Board be incapable of acting as Justices of the Peace in the execution of this Act, or in any matters relating to the Highways under the care and management of said Board ;

And every such Board shall be a Body Corporate by the style of the Highway Board for the District of (inserting the name of the Highway District), and by that name shall have perpetual succession and a common seal, and sue and be sued, and have power and authority (without licence in Mortmain) to hold lands for the purposes of the Highways.

8. The Highway Board for every District shall in every year hold not less than 4 ordinary meetings, and the meetings of such Board after their first meeting shall be holden at such convenient place or places, and at such times, as they shall at their first meeting and from time to time thereafter appoint ;

Highway Boards to hold 4 ordinary meetings every year.

And one of such meetings shall be appointed for the purpose of auditing the annual accounts of the Board as herein-after provided ;

And any such Board may also hold special meetings, every such special meeting to be called by the Clerk to such Board, by the direction of the Chairman or Vice-Chairman, or upon the requisition of any 3 members of such Board ;

Special Meetings.

Provided that no business, matter, or question shall be done, discussed, or entertained at any such special meeting other than the special business or matter for which it shall have been called, and which shall be specified in the notice convening such meeting.

9. Any meeting of the Highway Board may be adjourned from time to time to any day and hour and to the same or any other place ;

Adjournment of meetings.

And if there be not 3 members of the Board present within one hour after the time appointed for holding any meeting then it shall be lawful for the members or member present, or, if no member be present, for the Clerk to such Board, to adjourn such meeting in manner aforesaid.

10. Notice in writing of every special meeting of any Highway Board, and of every meeting of any such Board holden by adjournment (whether by adjournment from an ordinary or a special meeting), shall be given by the Clerk to such Board to every member thereof, and every such notice shall be given or sent by the post or otherwise by the Clerk to every such member, or left at his place of abode, 7 days, or, in the case of a meeting holden by adjournment, 3 days at least before the day appointed for the meeting to which it relates.

Notice of special and adjourned meetings.

11. The Highway Board for each District shall elect 2 members of such Board to be the Chairman and Vice-Chairman thereof for the space of one year, and such election shall take place at their first meeting, or at some adjournment thereof, in every year ;

Chairman and Vice-Chairman to be elected.

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And the Chairman and Vice-Chairman of each Highway Board at the commencement of this Act shall continue in office until their successors shall be appointed at the first meeting of the Board as aforesaid ;

And the Chairman, or, in case of his absence at the commencement of any meeting the Vice-Chairman, shall preside at all meetings of such Board, and shall have a casting vote in addition to his vote as a member ;

And in case at the commencement of any meeting both Chairman and Vice-Chairman be absent, then such other member as may be chosen by the major part of the members present shall preside as Chairman of such meeting ;

And whenever the Chairman or Vice-Chairman shall die or become disqualified, refuse, or become incapable to act, such Board shall at their ordinary meeting to be holden next after such death, disqualification, refusal, or incapacity, elect some other member of such Board in his stead.

Quorum.

12. All Acts, Orders, matters, and things by this Act authorised to be made or done by any Highway Board may be made or done by the major part of the members of any such Board present at any meeting to be holden by virtue of this Act, the whole number present together at such meeting not being less than 3 ;

Authentication of Orders.

And all Orders made by any such Board shall be in writing, and signed by the Chairman presiding at the meeting at which the same are made and countersigned by the Clerk, and sealed with the seal of the Board.

Defect of Election, &c., of members not to vitiate proceedings.

13. No defect in the qualification or election of any person acting as a member of a Highway Board at any meeting thereof, the majority of the persons assembled at which shall be entitled to act as members of such Board, shall be deemed to vitiate or make void any proceedings of such Board in which he may have taken part.

Clerks.

14. Any Highway Board shall have power by writing, upon which no stamp or other duty shall be payable, to appoint a fit and competent person to be Clerk to such Board, and shall also determine the amount of salary to be paid to the Clerk ;

And the Clerk, in person, or by such deputy as shall be elected by such Board, shall attend all meetings of such Board, and shall conduct the correspondence thereof, and enter and keep, in books to be provided for the purpose, notes, minutes or copies, as the case may require, of the meetings, acts, orders, resolutions, proceedings, and correspondence of such Board, and shall keep all books, papers, and documents committed to his charge, and shall perform all such other duties as the Board may direct.

Appointment of Treasurer.

15. Any Highway Board shall, at their next General Annual Meeting after the passing of this Act, by writing, upon which no stamp or other duty shall be payable, appoint a fit and competent person to be Treasurer of such Board, and the said Board shall have power to fix, and from time to time to alter as they see fit, the salary, if any, to be paid to such Treasurer ;

And the Highway Board shall, before the aforesaid Treasurer shall enter upon his office, take sufficient security for the due performance by him of the duties of the office ;

And the Treasurer of each Highway Board shall receive and hold to the account of such Board all moneys paid to or for the use of such Board, and shall make payments thereout under Orders of such Board, and shall once in every 3 months, or on such days as the Board may direct, or oftener if required by the Board, make up an account of all moneys received and paid by him, and deliver the same to the Clerk of the Board ;

And he shall keep separate and distinct accounts for each Pariah within his District, and such accounts shall specify the different sums, and the persons to whom and by whom the same shall have been paid.

Salaries of Clerk and Treasurer.

16. The salaries to be paid to the Clerk and Treasurer of each District shall, by an Order to be made by the Highway Board of such District, be paid out of the moneys levied for the repair and maintenance of the Highways, and shall be apportioned and charged upon the Parishes within each respective District in the same manner and in the same proportion as the County Rate shall be chargeable at the time such Order is made.

Power to dismiss Clerk, &c.

17. The Highway Board may at any time dismiss any Clerk or Treasurer so appointed, and as often as the said offices shall become vacant by such dismissal, or by death, resignation, or otherwise, the said Highway Board shall at their next regular meeting, or as soon after as conveniently may be, appoint some other fit and proper person to fill the same.

Two offices not to be held by the same person.

18. The offices of Treasurer, Clerk, and Surveyor of any Highway Board, or any 2 of such offices, shall not be held by the same person, or by persons in partnership with each other, or by persons in the relation of employer and clerk, agent, or servant, one of the other, or of the partner of either of them ;

And if any person shall accept or hold either the office of Treasurer, Clerk, or Surveyor contrary to this provision he shall forfeit and pay the sum of £100 to any person who shall sue for the same, to be recovered, with full costs of suit, in any Court of competent Jurisdiction.

Boards to manage Highways.

19. The Highway Board for each District shall, subject to the provisions and exceptions in this Act, have the management of the several Highways lying within their District, and of the repairing and maintaining of the same, and shall direct the execution of any works which may from time to time be necessary for such purposes ;

But it shall not be lawful for any person, being a member of any Highway Board, to hold any place, office, or appointment of emolument, or to be a contractor directly or indirectly, or to be concerned or engaged in any contract for making or repairing, or in any way relating to the road or roads in the District for which such person shall act.

Highway Board may contract to repair Highways within the Districts of Local Boards, &c.

20. The Highway Board of any District may contract with all or any of the following Bodies ; (that is to say,) any Local Board of Health constituted under "The Public Health Act, 1848," any Local Board constituted under "The Local Government Act, 1858," any Commissioners or other Body acting under any Local Act of Parliament, the County Roads Board, the Court of Quarter Sessions of the County in which the District is situate, and the Council of any Borough for the

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repair and maintenance by such Highway Board of all or any of the Highways or Turnpike Roads under the care of such Local Board of Health, Local Board, County Roads Board, Commissioners, or other Body, (as the case may be,) or of the Highways over and at the ends of Bridges which are maintainable at the expense of the County or of any Borough, or any other Highways which are maintainable at the expense of the Borough ;

And such Highway Board may contract as aforesaid, upon such terms as to the payments to be from time to time made to such Board in respect of their undertaking such repairs and maintenance, and as to the duration and determination of the contract, as may be agreed upon between the parties ;

And any such Local Board of Health, Local Board, Commissioners, County Roads Board, or other Body, Court of Quarter Sessions, and Council may contract as aforesaid with such Highway Board ;

And while any contract made under this provision is in force the Highway Board and their Surveyor shall, in respect of the repairs and maintenance of the Highways and roads to which such contract relates, have and perform the same powers and duties and be subject to the same responsibilities as with regard to Highways within the District of such Board, and the other contracting party shall be divested of all powers, duties, and responsibilities in respect of such repairs and maintenance, and all money payable under such contract shall be paid out of the moneys which would have been applicable to defray the expenses of the repair and maintenance of such Highways or Turnpike Roads if such contract had not been made.

21. Every Highway Board, for defraying the repairs, expenses and apportioned part of expenses chargeable as aforesaid, on each Parish within their District, shall from time to time, by Order under their seal, require the Overseers of such Parish to levy, and to pay over to the Treasurer of such Board, or into any bank in such Order mentioned, and within the time or times thereby limited, the sum which after giving due credit to such Parish for all penalties and other moneys received in respect thereof, such Board may require for the purpose aforesaid (and any such Order may be made wholly or in part in respect of expenses incurred at any time within 6 months before the making of the Order, or of expenses to be thereafter incurred) ;

Expenses of Highway Boards.

And where any Parish within the meaning of this Act is part only of any Parish for which Overseers are appointed, the Highway Board shall specify in their Order the part of such last-mentioned Parish on which any sum required by such Board is to be levied.

22. The Overseers of the Poor of the Parishes to whom such Orders as aforesaid are issued shall levy the amounts mentioned therein according to the exigency thereof, and shall for that purpose make separate equal pound Rates upon their Parishes, or the parts thereof respectively upon which the sums specified in such Orders are required to be levied, in respect of the sums thereby ordered to be levied, and shall make such Rates of such amount in the pound on the annual value of the property rateable as will in their judgment, having regard to all circumstances, be sufficient to raise the sums specified in such Orders ;

Overseers to levy Rates for raising the money required by Highway Board.

And such Rates shall be levied on the persons and in respect of the property by Law rateable to the Relief of the Poor in the respective Parishes, and shall be assessed upon the net annual value of such property, ascertained by the Rate for the time being for the Relief of the Poor, provided that the Rate shall also extend to such woods, mines, and quarries of stone, or other hereditaments, as were before the said Act of the 5th and 6th years of King William IV. usually rated to the Highways ;

And the said Overseers shall, for the purpose of levying such Rates, proceed in the same manner, and have the same powers, remedies, and privileges, as for levying money for the Relief of the Poor, and all such Rates shall be allowed in the same manner, and be subject to all the same provisions in relation to appeal and to excusing persons from payment on account of poverty, and otherwise, as the Rate for the Relief of the Poor in the same Parish ;

And such Overseers shall pay to the Treasurer of the Highway Board, or otherwise as in such Orders directed, the sums mentioned in the Orders within the time or respective times specified for that purpose, and the excess, if any, which may have been levied beyond such sums shall be placed to the credit of the Parish or part in which the same has been levied ;

And the said Overseers shall, at the time of making any such payment, deliver with the money a note in writing signed by them specifying the amount so paid, which note shall be kept as a voucher for the receipt of that particular amount ;

And the receipt of the Treasurer of the Board, or of any proper officer or person of or belonging to any Bank into which such money is so paid, specifying the amount paid to him by the Overseers, shall be a sufficient discharge to the Overseers for such amount.

23. In every Parish in which a paid Collector of Poor Rates shall have been or may hereafter be duly and legally appointed, every such Collector shall, if the Highway Board so direct and authorise him, collect the Highway Rate for every such Parish, and the Highway Board shall determine the salary or additional salary to be paid to every such Collector, and every such Collector shall have all the same powers, remedies, and privileges for the levying and enforcing the payment of such Rates as the Overseers of the Poor have under this Act ;

Power to Highway Board to direct Collectors of Poor Rate to collect Highway Rate.

And it shall be lawful for every Highway Board, and they are hereby required, to take security from every Collector authorised to collect the Highway Rate under this Act, which security shall be to the full amount of the sum likely to be in the hands of the said Collector at any one time.

24. Provided always, that the Rate or Rates to be levied for defraying any expenses under this Act shall not exceed in any one year the amount in the pound of the rateable value of the property rateable thereto under this Act now by Law limited in respect of the Highway Rate.

Restriction in amount of Rates.

25. In case the amount ordered by any such Order as aforesaid to be paid by the Overseers of any Parish be not paid in manner directed by such Order, and within the time or times therein specified for that purpose, it shall be lawful for any 2 Justices of the Peace, upon the complaint by the Board or by any person authorised by them for this purpose, to issue their Warrant for

Overseers on non-payment of the Rate may be distrained upon.

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Special persons
may levy Rates
on default of
Overseers.

Accounts to be
made up to 25th
March, and
statement to be
published.

Statement to be
sent to Local
Government
Board.

Penalty for
neglect.

Abstract of
statements to be
laid before Par-
liament.

Forms may be
prescribed.

Town Councils
having Commis-
sions of the
Peace may
assume the
powers of High-
way Boards.

Where resolu-
tion passed,
Council to have
powers of High-
way Board.

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76.

No Parochial
Surveyor to be
appointed after
the passing of
this Act.

levying the amount, or so much thereof as may be in arrear, by distress and sale of the goods of all or any of the said Overseers ;

And in case the goods of all the Overseers be not sufficient to pay the same the arrears thereof shall be added to the amount of the next levy which shall be directed to be made in such Parish for the purposes of this Act, and shall be collected by the like methods.

26. Any Highway Board may, in case of any default or neglect of any Overseers to pay the amount required by any such Order as aforesaid, within the time or times and in the manner directed by such Order, appoint persons to levy any money required by such Board for the purposes of this Act in any Parish, and such persons shall proceed in the same manner, and have the same powers, remedies, and privileges, and be subject to the same regulations and penalties with reference to the levying of such money, as any Overseers would have had or been subject to with reference to levying any such money in pursuance of an Order of the Highway Board.

27. The accounts of every Highway Board shall be made up and balanced on the 25th day of March in every year, and shall be audited by such Board, and signed by the Chairman ; and such Board shall cause a statement to be printed and published in one or more newspapers circulated in their County within 30 days after the said 25th day of March, showing the receipt and expenditure in respect of each Parish, and the apportioned part of expenditure chargeable thereto in respect of the district fund, and such other particulars, and in such form as the *Secretary of State*^(a) may direct, as herein-after mentioned.

28. The Clerk to every Highway Board shall, within such 30 days, transmit such statement to one of *Her Majesty's principal Secretaries of State* ;

And any such Clerk who shall not within the time aforesaid transmit the said statement to the said *Secretary of State* shall for every such offence, upon a summary conviction for the same before 2 Justices of the Peace, be liable to a penalty of £10.

29. The *Secretary of State* shall cause the statements so transmitted to be abstracted, and the abstracts thereof to be laid before both Houses of Parliament, with the other statements in relation to Highways required to be abstracted and laid before Parliament by the Act of the Session holden in the 12th and 13th years of Her Majesty, chapter 35.

30. It shall be lawful for one of *Her Majesty's principal Secretaries of State* to cause to be prepared such forms for such statement as he may from time to time deem suitable, and also from time to time to alter the forms for the annual statement prescribed by the said Act of the 12th and 13th years of her Majesty, but no statement shall be transmitted under that Act concerning Parishes wholly within a Highway District under this Act.

31. The Council of every Borough having a separate Commission of the Peace may, by a resolution of such Council at a meeting held for the purpose, in any year after the expiration of the time limited by Law for the election of Surveyors of Highways for that year, or 40 days at the least before the commencement of the time limited for such election, assume the powers of a Highway Board under this Act ;

But no such resolution shall be valid unless a month's previous notice of the meeting and of the purpose thereof has been given in the manner in which notices of meetings of the Council are by Law required to be given, and two-thirds of the members present at the meeting concur in such resolution ;

And the Chairman of any such meeting may, with the consent of a majority of the members present, adjourn the same from day to day ;

And notice of such resolution shall be certified under the seal of the Corporation of such Borough to the Clerk of the Peace of the County, or (if such Borough be situate in more than one County) of each County in which the Borough is wholly or in part situate.

32. Any such Council which may have assumed the powers of a Highway Board, by resolution passed and certified as aforesaid, shall, with respect to Parishes and parts of Parishes within such Borough, have and be subject to the powers and obligations vested in or imposed on a Highway Board constituted under this Act with respect to Parishes forming the District of such Board, save that such powers shall not extend to authorise the appointment of a separate Clerk or Treasurer for the purposes of this Act ;

And the provisions of this Act applicable in the case of Highway Districts formed thereunder, to the Highway Board thereof, and their Clerk, Treasurer, and Surveyor, shall, in the case of such Borough, be respectively applicable to the Council and to the Town Clerk and Treasurer thereof, and to the Surveyor of Highways to be appointed by such Council, as if such Borough were a Highway District constituted under this Act, and such Council were the Highway Board thereof ;

And all acts to be done by such Council by virtue of the powers conferred by this Act shall be done in like manner as if done by virtue of the said Act "for the regulation of Municipal Corporations in England and Wales ;"

And any such Council may, if they think fit, appoint a committee for the purposes of this Act, in like manner as for any of the purposes of such last-mentioned Act, the Acts of such committee to be submitted as therein provided to the Council, for their approval ;

Provided nevertheless, that the expenses incurred in the execution of this Act by the Council of any Borough or any committee of such Council shall be defrayed in manner provided with respect to expenses of Highway Boards :

Provided always, that the powers of the Council of a Borough under this enactment shall not extend, nor shall its District as a Highway Board be deemed to include any Parish or District under any Board mentioned in the first section of this Act.

33. From and after the passing of this Act no Parochial Surveyor shall be elected or appointed in South Wales under the said Act of the 5th and 6th years of King William IV., chapter 50, for any Parish comprised in such District.

(a) Now the Local Government Board. (40 & 41 Vict., 66, § 1.)

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35. No toll shall be demanded by virtue of any Act of Parliament on any Turnpike Road in any Highway District constituted under this Act from the Surveyor of the Highway Board of such District when executing or proceeding to execute his duties as such Surveyor, and all provisions applicable to the exemptions in the Act of the 3rd year of King George IV., chapter 126, shall apply to and in the case of the exemptions conferred by this enactment.

Surveyor of Highway Board exempt from Turnpike Tolls.

36. Where any Highway which any Body Politic or Corporate or person is liable to repair by reason of tenure of any land, or otherwise howsoever, is out of repair, the Highway Board of the District in which such Highway is situate may, if they see fit, direct their Surveyor to repair the same, and the expenses to be incurred in such repair shall be paid by the party liable to repair as aforesaid ;

Highway Board may order Surveyor to repair certain roads, and charge the parties liable.

And it shall be lawful for any Justice, upon the application of any person authorised in this behalf by the Highway Board, to summon the party liable to pay such expenses to appear before 2 Justices at a time and place to be named in such summons, and upon the appearance of the parties, or in the absence of either of them, it shall be lawful for such Justices to hear and determine the matter, and make such Order, as well as to costs or otherwise, as to them may seem just.

37. Where any person or Corporation is liable, by reason of tenure of lands or otherwise, to repair any Highway situate in a Highway District, the person or Corporation so liable, or the Surveyor of Highways of the District, may apply to any Justice of the Peace for the purpose of making such Highway a Highway to be repaired and maintained by the Parish in which the same is situate ;

Justices may order certain Highways to be made Highways repairable by Parishes.

And such Justice shall thereupon issue his summons requiring such Surveyor, or the party so liable to repair such Highway as aforesaid, to appear before 2 or more Justices in Petty Sessions assembled, and the Justices at such Petty Sessions shall proceed to examine and determine the matter, and shall, if they think fit, make an Order under their hands that such Highway shall thereafter be a Highway to be thereafter repaired and maintained by the Parish, and shall in such Order fix the proportion of the expenses of repairing and maintaining such Highway to be annually paid by such person or Corporation to the Treasurer of the Highway Board of the District in which such Highway is situate, and such Order shall be binding upon all persons and parties whatsoever :

Provided nevertheless, that such Justices, instead of fixing the proportion of the expenses of repairing such Highway to be annually paid as aforesaid, may, by an Order under their hands, fix a certain sum to be paid by such person or Corporation to the Treasurer of such Board, in full discharge of all claims thereafter in respect of the repair and maintenance of such Highway ;

And in default of payment of such last-mentioned sum, or of such annual sum as aforesaid, the Clerk of such Board may proceed for the recovery thereof in the same manner as any penalties or forfeitures are recoverable under the said Act of the 5th and 6th years of King William IV., chapter 50 :

Provided always, that when the sum so fixed to be paid in full discharge of all claims thereafter in respect of the repair and maintenance of such Highway exceeds £100, the same, when received, shall be invested in the name of the Highway Board of the District in some Public Government Securities, and the interest and dividends arising therefrom shall be applied by such Board towards the repair and maintenance of the Highways within the Parish in which such Highway is situate ;

But when such sum does not exceed £100, the same, or any part thereof, at the discretion of such Highway Board, shall from time to time be applied by such Board towards the repair and maintenance of the Highways within such Parish ;

And from and after the making of such Order such Highway shall be repaired in like manner and at the like expense as other Highways which such Parish is liable to repair.

38. When any Highway Board consider any Highway within their District unnecessary for public use, they may direct their Surveyor to apply to 2 Justices to view the same, and shall authorise him to pay all expenses attending such view (which expenses and other the expenses of the Surveyor consequent upon such application shall be expenses chargeable under this Act on the Parish in which the Highway in question is situate), and thereupon the like proceedings shall be had as in the case where application is made under the said Act of the 5th and 6th years of King William IV., chapter 50, to procure the stopping up of any Highway, save only that the Order to be made thereupon, instead of directing the Highway to be stopped up, shall direct that the same shall cease to be a Highway which the Parish is liable to repair, and the liability of the Parish shall cease accordingly ;

Discontinuance of unnecessary Highways.

And for the purpose of such proceedings under this enactment, such variation shall be made in any notice, Certificate, or other matter preliminary to the making of such Order as the nature of the case may require :

Provided always, that if at any time thereafter, upon application of any person interested in the maintenance of such Highway, after one month's previous notice in writing thereof to the Clerk of the Highway Board for the District in which such Highway is situated, it appear to any Court of General or Quarter Sessions of the Peace that from any change of circumstances since the time of the making of any such Order as aforesaid under which the liability of the Parish to repair such Highway has ceased, the same has become of public use, and ought to be kept in repair by the Parish, they may direct that the liability of the Parish to repair the same shall revive from and after such day as they may name in their Order, and such liability shall revive accordingly as if the first-mentioned Order had not been made ; and the said Court may by their Order direct the expenses of and incident to such application to be paid as they may see fit.

39. And with respect to the adoption of new roads to be maintained as public roads under this Act, be it enacted, That no road or occupation way made or hereafter to be made by or at the expense of any individual or private person, Body Politic or Corporate, shall be deemed or taken

Regulations as to the adoption of new roads to be maintained as public roads under this Act.

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to be a public road, to be repaired and maintained according to the provisions of this Act, unless the person, Body Politic or Corporate, proposing to dedicate such road to the use of the Public shall give 3 calendar months previous notice in writing to the District Surveyor of the District of his intention to dedicate such road to the use of the Public, describing its situation and extent;

And the said District Surveyor, upon receiving such notice, shall view the same, and shall report to the Highways Board of the District whether such road is well and properly laid out and made, and whether the same is of sufficient public utility to justify its being kept in repair and maintained as one of the Highways of such District;

And if the said Board shall be satisfied, upon such report or otherwise, that the said road ought to be so kept in repair and maintained, they shall certify in writing accordingly;

And such Certificate, signed by the Chairman of the Highway Board for the time being, shall be transmitted by him to the County Roads Board of such County;

And thereupon, after the said road shall have been used by the Public, and duly repaired and kept in repair by the said person, Body Politic or Corporate, for the space of 12 calendar months, the same shall thenceforth become one of the Highways of such County, and shall thereafter be repaired and maintained according to the provisions of this Act.

Proceedings in case Highways are not kept in repair.

40. From and after the passing of this Act, if any Highway is out of repair, or is not well and sufficiently repaired and amended, an information thereof on the oath of one credible witness is given to any Justice of the Peace, it shall and may be lawful for such Justice and he is hereby authorised and required to issue a summons requiring the Surveyor of the District in which such Highway is situated, or other person or Body Politic or Corporate chargeable with such repairs, to appear before the Justices at some Petty Sessions in the said summons mentioned to be held within the Division in which the said Highway may be situate, and the said Justices shall either appoint some competent person to view the same, and report thereon to the Justices in Petty Sessions assembled on a certain day and place then and there to be fixed, at which the said District Surveyor or other party as aforesaid shall be directed to attend, or the said Justices shall fix a day whereon they or any 2 of them shall attend to view the said Highway;

Justices may order Highways to be repaired at the expense of parties liable.

And if to the Justices at such Petty Sessions, on the day and at the place so fixed as aforesaid, it shall appear, either on the report of the person so appointed by them to view, or on the view of the said Justices, that the said Highway is not in a state of thorough and effectual repair, they the said Justices at such last-mentioned Petty Sessions shall make an Order requiring the said District Surveyor to repair the said Highway within a time limited therein, and shall make an Order requiring the Overseers of the Poor, or other party or Body Politic or Corporate liable to the repair of the said Highway, to pay to the Treasurer, at such time or times as they shall direct, either in one sum or by instalments, a sum of money to be therein stated, which shall be equal in amount to the sum which the said Justices shall on the evidence produced before them judge requisite for the repairing such Highway;

Money not paid to be levied by distress.

And in default of such money being paid within the time so limited, it shall be lawful for any 2 Justices of the Peace to issue their Warrant for levying the amount of money, or so much thereof as may not be paid within the time limited, by distress and sale of the goods of the said Overseers of the Poor, and such money, when recovered, shall be applied to the repair of such Highway;

And in case more parties than one are bound to repair any such Highway, the said Justices shall direct in their Order what proportion shall be paid by each of the said parties:

Provided nevertheless, that the said Justices shall not have power to make such Orders as aforesaid in any case where the duty or obligation of repairing the said Highway comes in question.

Width of roads that have ceased to be Turnpike Roads.

41. All roads hereafter ceasing to be Turnpike Roads shall on their so ceasing be repaired and maintained by the Surveyor or Board, or other body liable to maintain the same, to the same width as they are or were required to be while Turnpike Roads;

And all roads heretofore Turnpike Roads, which have already ceased to be so, shall be repaired and maintained by such Surveyor, Board or other Body to the present width of such roads, and after the passing of this Act, as regards any road which has ceased or which may cease to be a Turnpike Road, the erection or making of any building, hedge, ditch, or other fence, or the doing of any other Act which would have been deemed an encroachment on any such road if the same had continued to be a Turnpike Road, shall be deemed an encroachment on a Highway, within Section 69 of the said Act of the 5th and 6th years of King William IV., although the same may be beyond the distance from the centre of the carriageway mentioned in the said Section.

Acts required to be done at Highway Sessions may be done at Petty Sessions.

42. It shall not be requisite for the Justices of the Peace to hold Special Sessions for executing the purposes of the said Act of the 5th and 6th of King William IV., chapter 50;

But all Acts and matters which might have been done at such Special Sessions under the said Act or this Act, or under any other Act of Parliament, may be done by 2 or more Justices at any Petty Sessions.

Provisions of 5 & 6 W. IV., 50, to remain in force, except as provided.

43. Except as herein otherwise provided, all the provisions of the said Act of the 5th and 6th years of King William IV., chapter 50, shall remain in force and be applicable as well to the Highways to be managed under this Act as to the Highways which may continue to be managed under that Act, and the said Act and this Act shall be construed together as one Act.

Act to extend only to South Wales.

44. This Act shall extend only to South Wales, and in the construction of this Act "South Wales" shall include and comprise the 6 counties following, and no others, viz., the counties of Glamorgan, Brecknock, Radnor, Carmarthen, Pembroke, and Cardigan.

Interpretation of terms.

45. In the construction of this Act, unless there be something in the subject or context repugnant to such construction, the word "Parish" shall mean any Parish, Place, or District maintaining its own Highways, or which, if this Act and the said Act of the 14th and 15th years of Her Majesty had not been passed, would have maintained its own Highways, and where part only of any such Parish, Place, or District is comprised in a Highway District constituted under this Act shall mean such part;

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[23 & 24 VICT.]

South Wales Highways.

[C. 68.]

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A.D. 1860.

The word "Borough" shall mean a Borough according to the meaning of the Act of the Session holden in the 5th and 6th years of King William IV., "for the regulation of Municipal Corporations in England and Wales," or any Corporate place which since the passing of that Act has become subject to the provisions thereof;

And the word "County" shall mean any County, Riding, Division, or Liberty having a separate Court of Quarter Sessions of the Peace.

[23 & 24 VICT.]

Defence of the Realm.

[C. 112.]

A.D. 1860.



23 & 24 VICT., c. 112.

*An Act to make better Provision for acquiring
Lands for the Defence of the Realm.*

*Revised
Statutes,
vol. xiii., p. 755.*

(28th August, 1860.)

40. It shall be lawful for the said Secretary of State, without any writ being issued or other legal proceeding being adopted, to stop up or divert or alter the level of any Highway, way, sewer, drain, or pipe over, through, under, or adjoining any lands comprised in any such declaration as aforesaid;

*Power to divert
Highways, &c.*

He, if necessary, previously making, opening, or laying down another good and sufficient way, sewer, drain, or pipe, in lieu of that stopped up or diverted.

[24 & 25 VICT.]

Locomotives.

[C. 70.]

A.D. 1861.



24 & 25 VICT., c. 70.

*An Act for regulating the use of Locomotives on
Turnpike and other Roads, and the Tolls to
be levied on such Locomotives and on the
Waggons and Carriages drawn or propelled
by the same.*

*Revised
Statutes,
vol. xiii., p. 1078.*

(1st August 1861.)

WHEREAS the use of Locomotives is likely to become common on Turnpike and other roads: And whereas the General Turnpike and Highway Acts and many of the Local Turnpike Acts do not contain any provisions for regulating the use of Locomotives on the roads to which they respectively apply, nor do they authorise the levying of tolls upon or in respect of any Locomotive using the roads, or upon or in respect of any waggon or carriage drawn by Locomotives: And whereas under and by virtue of certain Local Turnpike Acts Tolls may be levied upon Locomotives and other engines drawing or propelling waggons or carriages, or upon the waggons or carriages so drawn or propelled, which are or may be prohibitory of the

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[24 & 25 VICT.]

Locomotives.

[C. 70.]

use of Locomotives on the roads to which the said Acts respectively apply : And whereas the Weighing Clauses in the General Turnpike Acts have not been framed in anticipation of traffic by Locomotives, and are in many respects ill adapted to the profitable carrying of goods, or to the levying of just and adequate tolls upon waggons or carriages drawn by Locomotives : And whereas it is desirable that the use of Locomotives on Turnpike and other roads should be regulated by uniform general provisions, and that toll should be levied upon such Locomotives and the waggons or carriages drawn by such Locomotives upon Turnpike roads : Be it therefore enacted, &c.

Scale of Tolls to be taken after passing of this Act.

1. From and after the passing of this Act all Trustees, Corporations, Commissioners, and other persons acting under and in execution of any existing General or Local Turnpike Road Act or Public Bridge Act shall demand and take tolls not exceeding the tolls following; that is to say,

For every Locomotive propelled by any power containing within itself the machinery for its own propulsion, such a toll for every 2 tons weight or fractional part of every 2 tons weight that such Locomotive shall weigh as shall be equal to the toll or tolls by their respective Acts made payable for every horse drawing any waggon, wain, cart, or carriage with wheels of a width similar to those of such Locomotive : or in the case of a toll by any such Act made payable being charged on the horse or horses drawing any such waggon, wain, cart, or carriage, without reference to the width of the wheels thereof, then such a toll for every 2 tons or fractional part thereof that such Locomotive shall weigh as shall be equal to one horse drawing such waggon, wain, cart, or carriage ; which tolls respectively shall be payable so often as tolls made payable as aforesaid for such waggon, wain, cart or carriage shall be payable at the same gate : Provided always, that if the wheels of such Locomotive shall rest upon any shoe or other bearing the surface of which shall bear upon the ground so as to prevent the wheels coming in contact therewith, such and the same tolls only shall be demanded and payable as if the wheels thereof were of a width similar to such shoe or bearing :

For every waggon, wain, cart, or carriage drawn or propelled by any Locomotive, for each pair of wheels thereof such a toll as shall not exceed the toll by their respective Acts made payable for 2 horses drawing any waggon, wain, cart, or carriage with wheels of a similar width, and for every additional wheel thereof one half toll in addition to the said toll ; or in the case of a toll by any such Act made payable being charged on the horse or horses drawing any such waggon, wain, cart, or carriage, without reference to the width of the wheels thereof, then such a toll for each wheel as shall be equal to one horse drawing such waggon, wain, cart, or carriage ; which said toll or tolls shall be payable so often as the toll made payable as aforesaid for such waggon, wain, cart, or carriage drawn by horses shall be payable at the same gate :

Provided always, that in every case where the wheels of any waggon, wain, cart or carriage shall not all be cylindrical, as described in the Act of the 3rd year of George IV., chapter 126, section 9, the toll payable in respect thereof shall be one-half more.

Repeal of former enactments as to Tolls to be taken for Locomotives.

2. All clauses and provisions in any Local or General Turnpike Road Act or Public Bridge Act authorising tolls to be demanded or taken upon Locomotives or carriages drawn by steam or any other than animal power, different to the tolls herein provided for, shall, so far as the same relate to such tolls, be and the same are hereby repealed :

Provided always, that this enactment shall not be deemed or construed to extend to any tolls authorised to be taken in respect of any private roads or private bridges, or to the roads comprised in the "Commercial Roads Continuation Act, 1849."

[§ 3 is repealed by the "Highway Act, 1878."]

As to the weight on each pair of wheels.

4. It shall not be lawful for any waggon, wain, cart, or other carriage so drawn or propelled as aforesaid, not having cylindrical wheels, to carry any greater weight than is permitted in such waggon, wain, cart, or carriage by the General Turnpike Act ;

And it shall not be lawful for any waggon, wain, cart, or other carriage having cylindrical wheels to carry over or above the weight of the waggon, wain, cart, or carriage, any greater weight than one ton and a half for each pair of wheels, unless the felloes, tires, or shoes are 4 inches or more in breadth ;

Nor to carry a greater weight than 2 tons for each pair of wheels, unless the felloes, tires, or shoes are 6 inches or more in breadth ;

Nor to carry a greater weight than 3 tons for each pair of wheels, unless the felloes, tires, or shoes are 8 inches or more in breadth ; and for every single wheel one half of that permitted to be carried on a pair of wheels ;

Nor in any case to carry a greater weight than 4 tons on each pair of wheels, or 2 tons on each wheel ;

But if such waggons, wains, or other carriages are built and constructed with springs upon each axle, then they shall be allowed to carry one-sixth more weight in addition to the above-mentioned weights upon each pair of wheels :

Provided always, that the regulation of weight herein mentioned and provided shall not extend to any waggon, wain, cart, or other carriage carrying only one tree, or one log of timber, or one block of stone, or one cable or rope, or one block, plate, roll, or vessel of iron or other metal, or compounded of any 2 or more metals cast, wrought, or united in one piece.

Secretary of State may prohibit Locomotives destructive to Highways or dangerous.

5. In case it appear to one of Her Majesty's principal Secretaries of State that the use of any particular description of Locomotive causes excessive wear and tear of the Highways, or is dangerous or inconvenient to the Public, or that the use of Locomotives generally or of any particular description of Locomotive is dangerous or inconvenient to the Public in certain Districts or places, it shall be lawful for such Secretary of State from time to time, by Order under his hand, to prohibit the use of any kind or description of Locomotive specified in such

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Locomotives.

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Order on any Highway whatsoever, or to prohibit the use of Locomotives, or any specified kind or description thereof, on the Highways within any place, District, or limit mentioned in such Order, or otherwise to restrict the use of Locomotives as circumstances may appear to him to require, and from time to time, by Order made as aforesaid, to revoke or alter any such Order previously made ;

And every Order made under this enactment shall be published in the *London Gazette*, and any person using any Locomotive contrary to any such Order shall for every such offence, on summary conviction thereof before 2 Justices, forfeit any sum not exceeding £10.

6. It shall not be lawful for the owner or driver of any Locomotive to drive it over any Suspension Bridge nor over any bridge on which a conspicuous Notice has been placed, by the authority of the Surveyor or persons liable to the repair of the bridge, that the bridge is insufficient to carry weights beyond the ordinary traffic of the District, without previously obtaining the consent of the Surveyor of the Road or Bridgemanster under whose charge such bridge shall be for the time being, or of the persons liable to the repair of such bridge ;

And in case such owner of the Locomotive and Surveyor of the road or bridge, or Bridgemanster, shall differ in opinion as to the sufficiency of any bridge to sustain the transit of the Locomotive, then the question shall be determined by an officer to be appointed, on the application of either party, by one of her Majesty's Principal Secretaries of State, whose certificate of sufficiency of such bridge shall entitle the owner of the Locomotive to take the same over such bridge.

7. Where any Turnpike or other roads, upon which Locomotives are or hereafter may be used, pass or are or shall be carried over or across any stream or watercourse, navigable river, canal, or railway, by means of any bridge or arch (whether stationary or moveable), and such bridge or arch, or any of the walls, buttresses, or supports thereof, shall be damaged by reason of any Locomotive or any waggon or carriage drawn or propelled by or together with a Locomotive passing over the same or coming into contact therewith, none of the Proprietors, Undertakers, Directors, Conservators, Trustees, Commissioners, or other person interested in or having the charge of such navigable river, Canal, or Railway, or the tolls thereof, or of such bridge or arch, shall be liable to repair or make good any damage so to be occasioned, or to make compensation to any person for any obstruction, interruption, or delay which may arise therefrom to the use of such bridge or arch, navigable river, Canal, or Railway, but every such damage shall be forthwith repaired to the satisfaction of the Proprietors, Undertakers, Directors, Conservators, Trustees, Commissioners, or other persons as aforesaid, respectively interested in or having the charge of such river, Canal, or Railway, or the tolls thereof, or of such bridge or arch, by and at the expense of the owner or owners or the person or persons having the charge of such Locomotive at the time of the happening of such damage ;

And all such owner and owners, person and persons having the charge of such Locomotive as aforesaid, shall also be liable, both jointly and severally, to reimburse and make good as well to the Proprietors, Undertakers, Directors, Conservators, Trustees, Commissioners, and other persons interested in or having the charge of any such navigable river, Canal, or Railway, or the tolls thereof, or of such bridge or arch, as to all persons navigating on or using, or who but for such obstruction, interruption, or delay would have navigated on or used the same, all losses and expenses which they or any of them may sustain or incur by reason of any such obstruction, interruption, or delay, such losses and expenses to be recoverable by Action at Law, which Action, in case of such Proprietors, Undertakers, Directors, Conservators, Trustees, Commissioners, or other persons so interested as aforesaid, may be brought in the name or names of their agent or agents, Clerk or Clerks for the time being, or by any person or persons legally authorised to act in their behalf.

Restrictions on use of Locomotives on Bridges.

Damage by Locomotives to Bridges to be made good by owners.

[§ 8 is repealed by the "Highway Act, 1878."]

10. All waggons, wains, carts, or carriages, as herein-before described, drawn by any Locomotive, and loaded with any materials such as are now exempt from toll under the provisions of any General or Local Act, shall be entitled to the same exemption as they would be if drawn by animal power.

Exemption from Tolls continued.

12. (a) All the Clauses and provisions of any General or Local Acts relating to Turnpike Roads or Highways shall, so far as the same are not expressly altered or repealed by or are not inconsistent with the provisions of this Act, apply to all Locomotives propelled by other than animal power, and to all waggons, wains, carts, and carriages of any other description drawn by such Locomotive, and to the owners, drivers, and attendants thereof, in like manner as if drawn by animal power :

Turnpike Road Acts to apply to locomotives.

Provided always, that the weight of every Locomotive, and the name of the owner or owners thereof, shall be conspicuously and legibly affixed thereon ;

And any owner not having affixed such weight and such name shall, upon conviction thereof before 2 Justices, forfeit any sum not exceeding £5.

And any owner who shall fraudulently affix thereon any incorrect weight shall, upon conviction thereof, forfeit any sum not exceeding £10.

13. Nothing in this Act contained shall authorise any person to use upon a Highway a Locomotive engine which shall be so constructed or used as to cause a public or private nuisance ; And every such person so using such engine shall, notwithstanding this Act, be liable to an Indictment or Action, as the case may be, for such use, where, but for the passing of this Act, such Indictment or Action could be maintained.

Right of action in case of nuisance.

14. This Act may be cited as the "Locomotive Act, 1861."

Short title.

(a) See as to some of the matters mentioned in this Section, the new provisions of the "Highway Act, 1878."

Hgh. I

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[25 & 26 VICT.]

Highways.

[C. 61.]



25 & 26 VICT., c. 61.

*Revised
Statutes,
vol. xlv., p. 108.*

An Act for the better management of Highways in England. (29th July, 1862.)

WHEREAS it is expedient to amend the Law relating to Highways in England: Be it enacted, &c.

Preliminary.

Limits of Act.
Definition of
"County" and
"Borough."

1. This Act shall not extend to Scotland or Ireland.
2. The word "County" in this Act shall not include a "County of a City" or "a County of a Town," but where a County, as herein-before defined, is divided into Ridings or other Divisions having a separate Court of Quarter Sessions of the Peace, it shall mean each such Division or Riding, and not the entire County; and for the purposes of this Act all Liberties and Franchises, except the Liberty of Saint Albans, which shall be considered a County, and except Boroughs as herein-after defined, shall be considered as forming part of that County by which they are surrounded, or if partly surrounded by 2 or more Counties, then as forming part of that County with which they have the longest common boundary;

Definition of
"Parish,"
"Highway Dis-
trict," and
"Highway
Board."

The word "Borough" shall mean a Borough as defined by the Act of the Session holden in the 5th and 6th years of King William IV., chapter 76, "for the Regulation of Municipal Corporations in 'England and Wales,'" or any place to which the provisions of the said Act have been or shall hereafter have been extended.

Definition of
"Principal Act"
and "Highway
Act."

3. The word "Parish" shall include any place maintaining its own Highways;
- The expressions "Highway District" and "Highway Board" shall refer only to Highway Districts formed and Highway Boards constituted in pursuance of this Act.
4. The Act passed in the Session holden in the 5th and 6th years of the reign of His late Majesty King William IV., chapter 50, and intitled "An Act to consolidate and amend the Laws relating to Highways in that part of Great Britain called England," is herein-after distinguished as "the Principal Act";

And this Act and the Principal Act, and the other Acts amending the Principal Act, are herein-after included under the expression "the Highway Acts."

Formation of Highway Districts.

Power to Jus-
tices, in General
or Quarter Ses-
sions assembled
to issue Pro-
visional Orders
for forming
Highway Dis-
tricts.

5. Any 5 or more Justices of a County may by writing under their hands require the Clerk of the Peace to add to or send with the notice required by Law to be given of the holding of Courts of General or Quarter Sessions a notice in the form marked (A.) in the Schedule, or as near thereto as circumstances admit, that at the Court therein mentioned a proposal will be made to the Justices to divide the County or some part thereof into Highway Districts, or to constitute the whole or some part thereof a Highway District, and also require the Clerk of the Peace to send by post in a prepaid letter notices in the aforesaid form to the Churchwardens or Overseers of every Parish mentioned in the said notice;

And upon such requisition being complied with the Justices assembled at the Court of General or Quarter Sessions mentioned in the notice may entertain such proposal, and make a provisional Order dividing their County or some part thereof into Highway Districts, or constituting the whole or some part of their County a Highway District, for the more convenient management of Highways, but such Order shall not be of any validity unless it is confirmed by a final Order of the Justices assembled at some subsequent Court of General or Quarter Sessions:

Provided that (a) [when it is proposed that only part of a County is to be constituted a Highway District, not less than 2 out of the 5 Justices making such proposal shall be resident in the said District, or acting in the Petty Sessional Division in which such District or some part thereof is situate.]

Regulations as
to the making,
&c., of Orders of
Justices.

6. The following regulations (b) shall be enacted as to the making, confirmation, and approval of the Orders of Justices for forming Highway Districts:

1. The Justices making a Provisional Order under this Act shall appoint some subsequent Court of General or Quarter Sessions, to be held within a period of not more than 6 months, for the taking into consideration the confirmation of the Provisional Order by a final Order:
2. The Clerk of the Peace shall add to or send with the notice required by Law to be given of the holding of Courts of General or Quarter Sessions a notice in the form marked (B.) in the Schedule hereto, or as near thereto as circumstances admit, of the appointment so made by the Justices in relation to the confirmation of the Provisional Order:

(a) The words in brackets which here follow are substituted by the "Highway Act, 1864," (27 & 28 Vict., 101, § 6), for words struck out.

(b) Amended by the "Highway Act, 1864," (27 & 28 Vict., 101, § 4.)

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Highways.

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3. The Justices assembled at the appointed Court of General or Quarter Sessions may make a further Order quashing the Provisional Order, or confirming it with or without variations, or respiteing the consideration of such Provisional Order to some subsequent Court of General or Quarter Sessions, provided—

Firstly, that where the variations made extend to altering the Parishes constituting any Highway District or Districts as formed in the Provisional Order, the Order shall be deemed to be provisional only, and shall be dealt with accordingly :

Secondly, that where a respite is made to any subsequent General or Quarter Sessions, the Clerk of the Peace shall give notice of such respite in manner in which he is required to give notice in respect of Sessions at which a Provisional or Final Order is proposed to be made :

4. The Provisional Order shall state the Parishes to be united in each District, the name by which the District is to be known, and the number of Waywardens (such number to be at least one) which each Parish is to elect :

[Sub-section 5 is repealed by the "Highway Act, 1864," § 10, and other words substituted.]

6. Notice of the Provisional and Final Orders shall as soon as possible after the making thereof be given by the Clerk of the Peace, by publishing a copy in the *London Gazette* ^(a) and in one or more newspapers circulating in the County, or if the whole County is not affected by such Order in one or more newspapers circulating in the District affected by such Orders, and by sending a copy by post in a prepaid letter to the Overseers of every Parish within the proposed Highway District, and there shall be added to the notice of the Provisional Order the date of the Sessions at which the confirmation of such Order will be considered.

- 7.^(b) The following restrictions shall be imposed with respect to the formation of Highway Districts in pursuance of this Act :

Firstly, there shall not be included in any Highway District formed in pursuance of this Act any of the following places ; that is to say,

Any part of a County to which the Act passed in the Session holden in the 23rd and 24th years of the reign of Her present Majesty, chapter 68, and intituled "An Act for the better management and control of the Highways in South Wales," extends :

The Isle of Wight :

Any District constituted under the "Public Health Act, 1848," and the "Local Government Act, 1858," or either of such Acts :^(c)

* * * * *

Any Parish or place within the limits of the Metropolis as defined by the Act passed in the Session holden in the 18th and 19th years of Her Majesty, chapter 120, and intituled "An Act for the better local management of the Metropolis."

Any Parish or place, or part of a Parish or place, the Highways whereof are maintained under the provisions of any Local Act of Parliament :

Secondly, there shall not be included in any Highway District formed in pursuance of this Act any Parish or place, or part of a Parish or place, within the limits of a Borough without the consent, firstly, of the Council of such Borough, and, secondly, of the Vestry of the Parish which, or part of which, is proposed to be included :

Thirdly, where any Parish separately maintaining its own Highways is situate in more than one County the whole of such Parish shall, for the purposes of this Act, be deemed to be within the County within which the Church of such Parish, or (if there be no Church) the greater part of such Parish, is situate :

Lastly, where a Parish separately maintaining its own Poor is divided into Townships, Tithings, Hamlets, or places, each of which separately maintains its own Highways, it shall be lawful for the Justices, if they think fit, in their Provisional Order to combine such Townships, Tithings, Hamlets, and places, and to declare that no separate Waywardens shall be elected for such Townships, Tithings, Hamlets, and places, and that such Parish shall be subject to the same liabilities in respect of all the Highways within it which were before maintained by such Townships, Tithings, Hamlets, and places separately, as if all their several liabilities had attached to the whole Parish ; and that a Waywarden or Waywardens shall be elected for such Parish as a whole ;

And where such Order is made, all the provisions herein contained in relation to Parishes within the meaning of this Act shall be applicable to the Parish formed by such combination.

Legal Objections to Formation of District.

8. No objection shall be made at any trial or in any legal proceeding to the validity of any Orders or proceedings relating to the formation of a Highway District, after the expiration of 3 calendar months from the date of the publication in the *Gazette* ^(a) of the Order under which the District is formed ;

And the production of a copy of the *London Gazette* containing a copy of the Order of Justices forming a Highway District shall be receivable in all Courts of Justice, and in all legal proceedings, as evidence of the formation of the District and of the matters in the said Order mentioned.

^(a) Publication of the notice in the *London Gazette* is no longer obligatory. (27 & 28 Vict., 101, § 12.)

^(b) This Section is amended by the "Highway

Act, 1864," (27 & 28 Vict., 101, § 7,) and by the "Highway Act, 1878."

^(c) These Acts are now merged in and superseded by the "Public Health Act, 1875."

Restrictions on formation of Highway Districts.

Rules as to objections and evidence.

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[25 & 26 VICT.]

Highways.

[C. 61.]

Highway Board.

Constitution of Highway Board. 9. There shall be enacted, with respect to the constitution of the Highway Board in each Highway District, the provisions following; (that is to say,)

- (1.) The Highway Board shall consist of the Waywardens elected in the several places within the District, in manner herein-after mentioned, and of the Justices acting for the County and residing within the District:
- (2.) The Board shall be a Body Corporate, by the name of the Highway Board of the District to which it belongs, having a perpetual succession and a common seal, with a power to acquire and hold lands for the purposes of the Highway Acts, without any licence in Mortmain:
- (3.) No Act or proceeding of the Board shall be questioned on account of any vacancy or vacancies in their Body:
- (4.) No defect in the qualification or election of any person or persons acting as members or member of the Board or Committee of a Board shall be deemed to vitiate any proceedings of such Board in which he or they have taken part in cases where the majority of members parties to such proceedings are duly entitled to act:
- (5.) Any minute made of proceedings at meetings of the Board or of Committees of the Board, if signed by any person purporting to be the Chairman of the Board or Committee of the Board, either at the meeting of the Board or Committee of the Board at which such proceedings took place, or at the next ensuing meeting of the Board or Committee of the Board, shall be receivable in evidence in all legal proceedings without further proof;

And until the contrary is proved every meeting of the Board or Committee of the Board in respect of the proceedings of which minutes have been so made shall be deemed to have been duly convened and held, and all the members thereof to have been duly qualified:

- (6.) No member of a Board, by being party to, or executing in his capacity of member, any contract or other instrument on behalf of the Board, or otherwise lawfully exercising any of the powers given to the Board, shall be subject to be tried or prosecuted, either individually or with others, by any person whomsoever; and the bodies or goods or lands of the members shall not be liable to execution of any legal process by reason of any contract or other instrument so entered into, tried, or executed by them, or by reason of any other lawful act done by them in execution of any of the powers of the Board:

And the members of the Board may apply any monies in their hands for the purpose of indemnifying themselves against any losses, costs, or damages they may incur in execution of the powers granted to them:

- (7.) The rules (a) contained in the Schedule hereto with respect to the proceedings of Highway Boards, and the other matters therein contained, shall be observed in the same manner as if such rules were enacted in the body of this Act.

Election of Waywardens.

Election of Waywardens. 10. The following regulations shall be observed with respect to the election of Waywardens in Highway Districts:

In every Parish forming part of a Highway District there shall be elected every year for the year next ensuing a Waywarden, or such number of Waywardens as may be determined by Order of the Justices:

Such Waywarden or Waywardens shall be elected in every Parish forming part of a Highway District at the meeting and time and in the manner, and subject to the same qualification and the same power of appointment in the Justices, in the event of no election taking place, or in the event of a vacancy, at, in, and subject to which a person or persons to serve the office of Surveyor would have been chosen or appointed if this Act had not passed:

The Justices shall in their Provisional Order make provision for the election of a Waywarden or Waywardens in places where no Surveyor or Surveyors were elected previously to the place forming part of a Highway District:

A Waywarden shall continue to act until his successor is appointed, and shall be re-eligible.

Consequences of formation of Highway District.

Consequences of establishment of Highway Board. 11. At and after the first meeting in any Highway District of the Board of such District the following consequences shall ensue:

All such property, real and personal, including all interests, easements, and rights in, to, and out of property, real and personal, and including things in action, as belong to or are vested in, or would but for this Act have belonged to or been vested in, any Surveyor or Surveyors of any Parish forming part of the District, shall pass to and vest in the Highway Board of that District for all the estate and interest of such Surveyor or Surveyors as aforesaid, but subject to all debts and liabilities affecting the same:

All debts and liabilities incurred in respect of any property transferred to the Highway Board may be enforced against the Board to the extent of the property transferred:

All such powers, rights, duties, liabilities, capacities, and incapacities (except the power of making, assessing, and levying Highway Rates,) as are vested in or attached to, or would but for this Act have become vested in or attached to, any Surveyor or Surveyors of any Parish forming part of the District, shall vest in and attach to the Highway Board:

All property by this Act transferred to the Board shall be held by them upon Trust for the several Parishes or places now maintaining their own Highways within their District to which such property belongs, or for the benefit of which it was held previously to the formation of the District.

(a) The rules here alluded to have been superseded by others. See 27 & 28 Vict., 101, § 27.

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[25 & 26 VICT.]

Highways.

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A.D. 1862.

Appointment of Officers.

12. The Highway Board of a District shall, at their first meeting or at some adjournment thereof, by writing under their Seal, appoint a Treasurer, Clerk, and District Surveyor; they may also at any meeting, if they think fit, appoint an Assistant Surveyor;

Power to Highway Board to appoint officers.

They may from time to time remove any of such Officers, and appoint others in the room of such as may be so removed, or as may die or resign;

They may also, out of any monies in their hands, pay such salaries as they think reasonable to the Clerk and District and Assistant Surveyor, and to the Treasurer, if they think necessary: Provided that before the Treasurer enter upon his office the Board shall take sufficient security from him for the due performance of the duties of his office;

But no appointment, except the first, to any of the offices specified in this Section, shall be made unless notice in writing has been sent to every member of the Board.

13. Not more than one office of Treasurer, Clerk, and District or Assistant Surveyor of the same Highway Board shall be held by the same person, or by persons in partnership with each other, or by persons in the relation of employer and clerk, agent, or servant, one of the other, or of the partner of either of them; and if any person accepts or holds the office of Treasurer, Clerk, or District or Assistant Surveyor, contrary to this provision, he shall be liable to a penalty not exceeding £50.

Two offices not to be held by the same person.

14. The Treasurer of each Highway Board shall receive, and hold to the account of such Board, all monies paid to or for the use of such Board, and shall make payments thereout under Orders of such Board, and shall once in every 3 months, on or at such days or times as the Board may direct, or oftener if required by the Board, make up an account of all monies received and paid by him, and deliver the same to the Clerk of the Board.

Duties of Treasurer.

15. The Clerk of every Highway Board shall in person, or by such deputy as may be allowed by such Board, attend all meetings of the Board, and shall conduct the correspondence thereof, and enter and keep, in books to be provided by the purpose, notes, minutes, or copies, as the case may require, of the meetings, acts, orders, resolutions, proceedings, and correspondence of such Board, and shall keep all books, papers, and documents committed to his charge, and shall perform all such other duties as the Board may direct.

Duties of Clerk.

16. The District Surveyor shall act as the agent of the Board in carrying into effect all the works and performing all the duties by this Act required to be carried into effect or to be performed by the Board, and he shall in all respects conform to the orders of the Board in the execution of his duties, and the Assistant Surveyor, if any, shall perform such duties as the Board may require, under the direction of the District Surveyor.

Duties of District Surveyor.

Works and Duties of Board.

17. The Highway Board shall maintain in good repair the Highways within their District, and shall, subject to the provisions of this Act, as respects the Highways in each Parish within their District, perform the same duties, have the same powers, and be liable to the same legal proceedings as the Surveyor of such Parish would have performed, had, and been liable to if this Act had not passed.

Board to maintain Highways.

It shall be the duty of the District Surveyor to submit to the Board at their first meeting in every year an estimate of the expenses likely to be incurred during the ensuing year for maintaining and keeping in repair the Highways in each Parish within the District of the Board, and to deliver a Copy of such estimate as approved or modified by the Board so far as the same relates to each Parish to the Waywarden of such Parish.

18. Where complaint is made to any Justice of the Peace that any Highway within the jurisdiction of the Highway Board is out of repair, the Justice shall issue 2 summonses, the one addressed to the Highway Board and the other to the Waywarden of the Parish liable to the repair of such Highway, requiring such Board and Waywarden to appear before the Justices at some Petty Sessions, in the summons mentioned, to be held in the Division where such Highway is situate:

Proceedings where Roads are out of repair.

And at such Petty Sessions, unless the Board undertake to repair the road to the satisfaction of the Justices, or unless the Waywarden deny the liability of the Parish to repair, the Justices shall direct the Board to appear at some subsequent Petty Sessions to be then named, and shall either appoint some competent person to view the Highway, and report to them on its state at such other Petty Sessions, or fix a day, previous to such Petty Sessions, at which 2 or more of such Justices will themselves attend to view the Highway.

At such last-mentioned Petty Sessions, if the Justices are satisfied either by the report of the person so appointed, or by such view as aforesaid, that the Highway complained of is not in a state of complete repair, it shall be their duty to make an order on the Board limiting a time for the repair of the Highway complained of;

And if such Highway is not put in complete and effectual repair by the time limited in the Order, the Justices in Petty Sessions shall appoint some person to put the Highway into repair, and shall by order direct that the expenses of making such repairs, together with a reasonable remuneration to the person appointed for superintending such repairs, and amounting to a sum specified in the Order, together with the costs of the proceedings, shall be paid by the Board;

And any Order made for the payment of such costs and expenses may be removed into the Court of Queen's Bench, in the same manner as if it were an Order of General or Quarter Sessions, and be enforced accordingly.

All expenses so directed to be paid by the Board in respect of the repairs of any Highway shall be deemed to be expenses incurred by the Board in repairing such Highway, and shall be recovered accordingly.

The Highway Board may appear before the Justices at Petty Sessions by their District Surveyor or Clerk, or any member of the Board.

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When obligation to repair is disputed.

19. When, on the hearing of any such summons respecting the repair of any Highway, the liability to repair is denied by the Waywarden on behalf of his Parish, or by any party charged therewith, the Justices shall direct a Bill of Indictment to be preferred, and the necessary witnesses in support thereof to be subpoenaed, at the next Assizes to be holden in and for the said County, or at the next General Quarter Sessions of the Peace for the County, Riding, Division, or place wherein such Highway is situate, against the inhabitants of the Parish, or the party charged therewith, for suffering and permitting the said Highway to be out of repair;

And the costs of such prosecution shall be paid by such party to the proceedings as the Court before whom the case is tried shall direct, and if directed to be paid by the Parish shall be deemed to be expenses incurred by such Parish in keeping its Highways in repair, and shall be paid accordingly.

[§§ 20—4 are repealed by the "Highway Act, 1864," § 32, and other provisions made as to the expenses of Highway Boards. §§ 25—6 are repealed by the "Highway Act, 1864," § 36, and other provisions substituted.]

Clerk of Board to transmit statement.
Penalty.

27. The Clerk of every Highway Board shall, within such 30 days after the said audit, transmit such statement to one of Her Majesty's Principal Secretaries of State; (a)

And any such Clerk who shall not within the time aforesaid transmit the said statement to the said Secretary of State shall for every such offence, upon a summary conviction for the same before 2 Justices of the Peace, be liable to a penalty not exceeding £10.

Abstract of statements to be laid before Parliament.

28. The Secretary of State shall cause the statements so transmitted to be abstracted, and the abstracts thereof to be laid before both Houses of Parliament, with the other statements in relation to Highways required to be abstracted and laid before Parliament by the Act of the Session holden in the 12th and 13th years of Her Majesty, chapter 35.

Form of statement to be prepared.

29. It shall be lawful for one of Her Majesty's principal Secretaries of State to cause to be prepared such forms for such statement as he may from time to time deem suitable, and also from time to time to alter the forms for the annual statement prescribed by the said Act of the 12th and 13th years of Her Majesty, but no statement shall be transmitted under that Act concerning Parishes wholly within a Highway District under this Act.

Officers appointed by Highway Board to account to them when required.

31. All Officers appointed by the Highway Board shall, as often as required by them, render to them or to such persons as they appoint a true, exact, and perfect account in writing under their respective hands, with the proper vouchers, of all monies which they may respectively to the time of rendering such accounts have received and disbursed on account or by reason of their respective offices, and in case any money so received by any such Officer remains in his hands, the same shall be paid to the Board, or to such person or persons as they in writing under their hands empower to receive the same;

And if any Officer refuses or wilfully neglects to render and give such account, or to deliver up such vouchers, or for the space of 14 days after being thereunto required by the Board refuses or wilfully neglects to give up to them or to such person or persons as they appoint all books, papers, writings, tools, and things in his hands, custody, or power relating to the execution of his office, it shall be lawful for any Justice of the Peace for the County where the Officer so making default is or resides, upon application made to him for that purpose by or on behalf of the Board, to make inquiry of and concerning any such default as aforesaid in a summary way, as well by the confession of the party as by the testimony of any credible witness or witnesses upon oath, and by Warrant under his hand and seal to cause such money as may appear to him to be due and unpaid to be levied by distress and sale of the goods and chattels of such Officer, rendering to him the overplus (if any), on demand, after payment of the money remaining due and deducting the charges and expenses of making such distress and sale; and if sufficient distress cannot be found, or if it appears to any such Justice in manner aforesaid that any such Officer has refused or wilfully neglected to give such account, or to deliver up all books, papers, writings, tools, matters, and things in his custody or power relating to the execution of his office, the Justice shall commit him to the House of Correction or Common Gaol of the County where such offender is or resides, there to remain without bail until he gives a true and perfect account and verifies the same in manner aforesaid, and produces and delivers up the vouchers relating thereto, and pays the money (if any) remaining in his hands as aforesaid according to the direction of the Board, or has compounded with the Board for such money and paid such composition (which composition the Board are hereby empowered to make and receive), or until he delivers up such books, papers, and writings, tools, matters, and things as aforesaid, or has given satisfaction to the Board concerning the same;

But no Officer who may be committed on account of his not having sufficient goods and chattels as aforesaid shall be detained in prison by virtue of this Act for any longer time than 6 calendar months.

Supplemental Provisions.

Provision as to extra-parochial places.

32. Where in pursuance of an Act passed in the 20th year of the reign of Her present Majesty, chapter 19, and intituled "An Act for the relief of the Poor in extra-parochial places," any place is declared to be a Parish, or where Overseers of the Poor are appointed for any place, such place shall for the purposes of this Act be deemed to be a Parish separately maintaining its own Highways;

And where in pursuance of the same Act any place is annexed to any adjoining Parish, or to any District in which the relief of the Poor is administered under a Local Act, such place shall for the purposes of this Act be deemed to be annexed to such Parish or District for the purposes of the maintenance of the Highways, as well as for the purposes in the said Act mentioned.

(a) Now the Local Government Board. (40 & 41 Vict., 66, § 1.)

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33. Where part of a Parish is not contiguous to the Parish of which it is a part, such outlying part may at the discretion of the Justices be annexed to a District, and, when so annexed, it shall, for all the purposes of the Highway Acts, be deemed to be a Parish separately maintaining its own Highways.

Provision for outlying part of Parishes.

34. Where any Highway which any Body Politic or Corporate or person is liable to repair by reason of tenure of any land, or otherwise howsoever, shall be adjudged in [the] manner provided by the (a) [Highway Act, 1862] to be out of repair, the Highway Board of the District in which such Highway is situate may, if they see fit, direct their Surveyor to repair the same, and the expenses to be incurred in such repair shall be paid by the party liable to repair as aforesaid ;

Expenses of Highways may be recovered from party liable to repair *ratione tenure*.

And it shall be lawful for any Justice, upon the application of any person authorised in this behalf by the Highway Board, to summon the party liable to pay such expenses to appear before 2 Justices at a time and place to be named in such Summons, and upon the appearance of the parties, or in the absence of either of them, it shall be lawful for such Justices to hear and determine the matter, and make such Order, as well as to costs or otherwise, as to them may seem just.

35. Where any person or Corporation is liable, by reason of tenure of lands or otherwise, to repair any Highway situate in a Highway District, the person or Corporation so liable may apply (b) to any Justice of the Peace for the purpose of making such Highway a Highway to be repaired and maintained by the Parish in which the same is situate ;

Highways repairable *ratione tenure* may be made repairable by the Parish.

And such Justice shall thereupon issue Summonses requiring the Waywarden of such Parish, the District Surveyor, and the party so liable to repair such Highway as aforesaid, to appear before 2 or more Justices in Petty Sessions assembled, and the Justices at such Petty Sessions shall proceed to examine and determine the matter, and shall, if they think fit, make an Order under their hands that such Highway shall thereafter be a Highway to be thereafter repaired and maintained by the Parish, and shall in such Order fix a certain sum to be paid by such person or Corporation to the Highway Board of the District, in full discharge of all claims thereafter in respect of the repair and maintenance of such Highway ;

And in default of payment of such sum the Board may proceed for the recovery thereof in the same manner as for the recovery of penalties or forfeitures recoverable under this Act :

Provided always, that when the sum so fixed to be paid in full discharge of all claims thereafter in respect of the repair and maintenance of such Highway exceeds £50, the same, when received, shall be invested in the name of the Highway Board of the District in some Public Government Securities, and the interest and dividends arising therefrom shall be applied by such Board towards the repair and maintenance of the Highways within the Parish in which such Highway is situate ;

But when such sum does not exceed £50 the same or any part thereof, at the discretion of such Highway Board, shall from time to time be applied by such Board towards the repair and maintenance of the Highways within such Parish :

Provided that any person aggrieved by any Order of Justices made in pursuance of this section may appeal to a Court of General or Quarter Sessions holden within 4 months from the date of such Order ;

But no such appeal shall be entertained unless the appellant has given to the other party to the case a notice in writing of such appeal, and of the matter thereof, within 14 days after such Order, and 7 clear days at the least before such Sessions, and has entered into a recognizance with 2 sufficient sureties, before a Justice of the Peace, conditioned to appear at the said Sessions, and to try such Appeal, and to abide the Judgment of the Court thereupon, and to pay such costs as may be by the Court awarded ;

And upon such notice being given, and such recognizance being entered into, the Court at such Sessions shall hear and determine the matter of the appeal, and shall make such Order thereon, with or without costs to either party, as to the Court may seem meet :

From and after the making of such Order by the Justices, or by the Court on appeal, as the case may require, such Highway shall be repaired in like manner and at the like expense as Highways which a Parish is liable to repair.

36. Where the inhabitants of any Parish are desirous of undertaking the repair and maintenance of any driftway, or any private carriage or occupation road, within their Parish, in return for the use thereof, the District Surveyor may, at the request of the inhabitants of such Parish assembled in a Vestry duly convened for the purpose, and with the consent in writing of the owner and the occupier of every part thereof, apply to the Justices in Petty Sessions to declare such driftway or road to be a Public Highway to be repaired at the expense of the Parish ;

Provision as to Roads laid out.

And upon such application being made it shall be lawful for the Justices to declare the same to be a public carriage road to be repaired at the expense of the Parish.

37. No toll shall be demanded by virtue of any Act of Parliament on any Turnpike Road from the Surveyor of a Highway Board when executing or proceeding to execute his duties as such Surveyor, and all provisions applicable to the exemptions in the Act of the 3rd year of King George IV., chapter 126, shall apply to the case of the exemptions conferred by this enactment.

Surveyor Highway Board exempted from Turnpike Tolls.

38. No Justices of the Peace shall act as such in any matter in which he has already acted as a member of the Highway Board, and in which the decision of such Board is appealed against.

Limiting jurisdiction of Justices.

39.(c) Any Highway District formed under this Act may from time to time be altered by the addition of any Parishes in the same or in any adjoining County, or the subtraction therefrom of any Parishes, and new Highway Districts may be formed by the union of any existing Highway

Power to alter Highway Districts.

(a) Amended by the "Highway Act, 1864." (27 & 28 Vict., 101, § 23.)

(c) Amended and extended by the "Highway Act, 1864." (27 & 28 Vict., 101, § 14.)

(b) This application may also emanate from any Highway Board. (27 & 28 Vict., 101, § 24.)

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Districts in the same or in any adjoining County, or any Parishes forming part of any existing Highway Districts, or any Highway District may be dissolved ;

But any such alteration of existing Districts, or formation of new Districts, or dissolution of any District, shall be made by Provisional and Final Orders of the Justices ;

And all the provisions of this Act with respect to the formation of Highway Districts and Provisional and Final Orders of Justices, and the notices to be given of and previously to the making of such Orders, and all other proceedings relating to the formation of Highway Districts, shall, in so far as the same are applicable, extend to such alteration of existing or formation of new Districts, or dissolution of Districts, as is mentioned in this Section ;

And in addition thereto provision shall be made, if necessary, in any Orders of Justices made under this Section for the adjustment of any matters of account arising between Parishes or parts of Districts in consequence of the exercise of the powers given by this Section.

Where any Parish is added to or any District united with any District in another County, the Final Order of the Justices of the County in which such Parish or District is situate shall not be confirmed by them until they shall have received the approval of their Provisional Order for such addition or union from the Justices of the County in which the District is situate to or with which such addition or union is to be made.

Where any Highway District is dissolved, or where any Parish is excluded from any Highway District, the Highways in such District or Parish shall be maintained, and the provisions of the principal Act in relation to the election of Surveyors and to all other matters shall apply to the said Highways, in the same manner as if such Highways had never been included within the limits of a Highway District.

Provision in case of failure of Board to hold first meeting.

40. If any Highway Board make default in holding its first meeting in pursuance of this Act, such Board shall not thereupon become disqualified from acting, but the Justices in General or Quarter Sessions shall, on the application of any persons liable to pay Highway Rates within the District, make such Order as they think fit for the holding of such Board at some other time, and any Order so made shall be deemed to be an Order capable of being removed into the Court of Queen's Bench, in pursuance of the Act passed in the Session holden in the 12th and 13th years of the reign of Her present Majesty, chapter 45, and may be enforced accordingly, and the costs of any application to the Court of Quarter Sessions in pursuance of this section shall be defrayed out of the District Fund of the Board.

Reservation of right to adopt Local Government Act.(a)

41. Any Parish or part of a Parish included in a Highway District may adopt the "Local Government Act" (a) in the same manner and under the same circumstances in and under which it might have adopted the same if it had not been included in such District ;

And upon such adoption being made such Parish or part of a Parish shall cease to form part of such District, subject nevertheless to the payment of any contribution that may at the time of such adoption be due from such Parish or part of a Parish to the Highway Board.

Application of Principal Act.

Construction of principal Act and this Act.

42. The following regulations shall be observed with respect to the construction of the principal Act and this Act :

1. This Act shall be construed as one with the principal Act so far as is consistent with the provisions of this Act :
2. The 9th Section of the principal Act, whereby it is enacted that a Surveyor may be appointed by the inhabitants of a Parish with a salary, shall not apply to any Parish within any District formed under this Act :
3. The 10th Section of the principal Act, whereby it is enacted that the Surveyor or Surveyors at the time of passing his or their accounts as therein mentioned shall deliver to the Justices a statement in writing of the name and residence of the person or persons appointed to succeed him or them as a Surveyor or Surveyors, shall not apply to any Parish within any District formed under this Act :
4. The 13th, 14th, 15th, 16th, and 17th Sections of the principal Act, providing for the formation of Parishes into Districts, and the 18th and 19th Sections of the principal Act, providing for the appointment of a Board in large Parishes, shall not apply to any Parish within any District formed under this Act :
5. The penalty imposed by Section 20 of the principal Act on the Surveyor for neglect of duty shall not apply to a Highway Board constituted under this Act :
6. Any summons or Notice, or any Writ or any proceeding, at Law or in Equity, requiring to be served upon the Board, may be served by the same being left at or transmitted through the Post in a pre-paid letter directed to the office of the Board, or being given personally to the District Surveyor or Clerk of the Board :
7. The 35th Section of the principal Act, whereby it is provided that the ratepayers of any Parish may divide amongst themselves the carriage of materials in manner therein mentioned, shall not apply to any Parish within any District formed under this Act :
8. The 39th, 40th, 43rd, 44th, and 45th Sections of the principal Act, relating to the accounts of Surveyors, shall not apply to the Highway Board of any District formed under this Act :

Relative duties of outgoing Surveyors and Highway Board.

43. On the formation of a Highway District the following regulations shall be enacted with respect to the Surveyors and the Highway Board :

1. No Surveyor shall be appointed under the principal Act for any Parish within such District :
2. The outgoing Surveyor of every Parish within the District shall continue in office until 7 days after the appointment of the District Surveyor by the Highway Board of the District of such outgoing Surveyor, and no longer ;

(a) Repealed and superseded by the "Public Health Act, 1875." (See Sched. V., pt. i.)

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And he may recover any Highway Rate made and then remaining unpaid, in the same manner as if this Act had not been passed, and the money so recovered shall be applied, in the first place, in reimbursing any expenses incurred by him as such Surveyor, and in discharging any debts legally owing by him on account of the Highways within his jurisdiction, and the surplus (if any) shall be paid by him to the Treasurer of the Highway Board ;

And he shall be entitled to receive from the Highway Board any sum ^(a) [not exceeding £5], which on the allowance of his account shall be found to be due to him as such Surveyor after the collection and expenditure of the whole of the Highway Rate made in such Parish during the last year :

3. The Highway Board shall, for all the purposes of the principal Act except that of levying Highway Rates, be deemed to be the successor in office of the Surveyor of every Parish within the District.

44. All the provisions of the principal Act for widening, diverting, and stopping up Highways shall be applicable to all Highways which now are or may hereafter be paved, repaired, or cleansed under or by virtue of any Local or Personal Act or Acts of Parliament, or which may be situate within the limits of any such Act or Acts, except Highways which any Railway Company, or the Owners, Conservators, Commissioners, Trustees, or Undertakers of any Canal, River, or Inland Navigation, are liable by virtue of any Act of Parliament relating to such Railway, Canal, River, or Inland Navigation to make, maintain, repair, or cleanse.

45. Whereas there are in certain Boroughs in England and Wales Roads and Highways that are now and have heretofore been repaired by the inhabitants of the several Parishes or Townships within which such Roads and Highways are situated, and who also contribute and pay to the General Rates levied for the repair of the public Streets, Roads, and Highways maintained and kept in repair by the Council of such Boroughs, by reason whereof a great burthen is imposed upon the ratepayers of the said Parishes and Townships ;

And it being doubtful whether the Council of such Boroughs have the power to adopt such Parish Roads and Highways, or to apply the Rates collected in such Boroughs in repairing the same, be it enacted, That it shall and may be lawful for the Council of every such Borough in England and Wales, upon the petition of the majority of the ratepayers of such Parishes or Townships present at a public meeting duly convened, to adopt all or any of such Parish Roads and Highways as the Council shall in its discretion consider advisable, and to apply the Rates levied and collected by the said Council for the repair of the public Streets, Roads, and Highways within such Borough in repairing and maintaining such Parish Roads and Highways :

Provided always, that it shall be competent for such Council, previous to adopting such Parish Roads and Highways, to require the provisions contained in any Local Act applying to the public Streets, Roads, and Highways of such Borough to be complied with.

46. No person through whose land a Highway passes, which is to be repaired by the Parish, shall become liable for the repair of such Highway by erecting fences between such Highway and the adjoining land, if such fences are erected with the consent in writing of the Highway Board of the District within which such Highway is situate in the case of a place within the jurisdiction of a Highway Board, and in the case of any other place with the consent of the Surveyor or other authority having jurisdiction over the Highway.

47. All penalties under this Act, and all monies recoverable as penalties, may be recovered summarily before any 2 or more Justices in the manner directed by the Act of the Session of the 11th and 12th years of Her present Majesty, chapter 43, and any Act amending the same ;

But where any sum adjudged to be paid under this Act in respect of such penalties or monies exceeds £5, an appeal may be had by any person aggrieved to a Court of General or Quarter Sessions in manner provided by the 110th Section of the Act passed in the Session holden in the 24th and 25th years of the reign of Her present Majesty, chapter 96, intituled " An Act to consolidate and amend the Statute Law of England and Ireland relating to larceny and other similar offences."

Provisions of principal Act to be applicable to Highways under local or personal Acts.

Enabling councils of certain boroughs to adopt Parish Roads and Highways and to apply Rates for their repair,

Highway Boards may permit land-owners to erect fences without incurring liability to repair Highways.

Recovery of penalties.

SCHEDULE.

Proceedings of Highway Boards.

[This part of this Schedule is repealed by the " Highway Act, 1864," § 27.]

FORM (A.)

NOTICE is hereby given, That at the Court of *General or Quarter Sessions* to be held on the _____ day of _____ a proposal will be made to divide the County of *Lincoln* into Highway Districts [or to divide the parts of *Holland* in the County of *Lincoln* into Highway Districts, or to constitute the County of *Rutland* a Highway District, or to constitute the Parishes of *Alford, Castle Carey, and Lovington*, in the County of *Somerset*, a Highway District.]

FORM (B.)

WHEREAS at a Court of *General or Quarter Sessions*, held on the _____ day of _____ last, a provisional Order was made in the words following ; that is to say, [here set out the provisional Order]
Notice is hereby given, that the confirmation of the said provisional Order by a final Order will be taken into consideration by the Justices at the Court of *General or Quarter Sessions* to be held on the _____ day of _____ next.

(a) The words within brackets are repealed by the " Highway Act, 1864." (27 & 28 Vict., 101, § 28.)

Hgh. K

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[26 & 27 VICT.]

Waywardens Contracts.

[C. 61.]



26 & 27 VICT., c. 61.

*Revised
Statutes,
vol. xiv.*

An Act to prevent Waywardens contracting for works within their own District.

(21st July, 1863.)

26 & 27 Vict., 61.

WHEREAS it is expedient that Waywardens appointed under an Act passed in the last Session of Parliament, intituled "An Act for the better management of Highways in England," should be prevented from contracting for any works to be executed under the said Act within their own Districts: Be it enacted, &c.

Penalty on Waywardens concerned in contracts.

1. No such Waywarden shall directly or indirectly, in his own name or in the name of any other person or persons, contract for the repair of any road, or for any other work to be executed under the provisions of the said recited Act within the Parish for which he is elected Waywarden, or within any other Parish in the same District, under the pain of forfeiting the sum of £10, with full costs of suit, to any person or persons who shall sue for the same by Action for debt in any County Court within the jurisdiction of which the Parish in which the roads to be repaired, or the other work so contracted for, is situate.

Highway Boards not liable to pay for any work so contracted for.

2. It shall not be lawful for any Highway Board to pay knowingly for any repair or work so contracted for, and any money paid by any Board under any such contract shall be recoverable by them with full costs from the person or persons to whom the same shall have been paid, by Action of debt in any of Her Majesty's Courts of Record at Westminster, if the same shall amount to above £50, or in any County Court as aforesaid if below that amount, and the balance so recovered, after paying all expenses, shall be placed to the credit of the District Fund.

Act to be as part of recited Act.

3. This Act shall be construed with and held to be part of the said recited Act for the better management of Highways in England.

A.D. 1863.

[26 & 27 VICT.]

Volunteers.

[C. 65.]



26 & 27 VICT., c. 65.

*Revised
Statutes,
vol. xiv., p. 615.*

An Act to consolidate and amend the Acts relating to the Volunteer Force in Great Britain.

(21st July, 1863.)

Diversion of footpaths.

[Part V. deals with the "Acquisition of land for Ranges," and from this Part the following Section is taken.]

37. Where a footpath crosses or runs inconveniently or dangerously near to any land purchased or acquired, or in respect of which any license is granted, for the purposes of this Part of this Act, such footpath may, with the consent of the Vestry of the Parish in which the same is situate, and upon the Certificate of 2 Justices that the footpath to be substituted is convenient for the public, be stopped up or diverted.

All proceedings to obtain such Certificate, and to stop up or divert such footpath, shall be taken in the manner in which proceedings are directed to be taken by the Act of the Session of the 5th and 6th years of King William IV. (chapter 50), "to consolidate and amend the laws relating to Highways in that part of Great Britain called England," in cases where a person other than the inhabitants in Vestry is desirous of stopping up, diverting, or turning a Highway, or as near thereto as circumstances admit;

With this exception, that the Certificate of the Justices shall be conclusive in cases where it states the fact of their having viewed the footpath to be stopped up or diverted, and that the proposed new footpath is convenient for the public.

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[26 & 27 VICT.]

Turnpike Continuance Act.

[C. 94.]

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A.D. 1863.



26 & 27 VICT., c. 94.

An Act to amend the Law relating to the repair of Turnpike Roads in England, and to continue certain Turnpike Acts in Great Britain.
(28th July, 1863.)

Revised Statutes,
vol. xiv., p. 716.

1. Whereas doubts are entertained whether Highway Boards established under the Act of the Session of the 25th and 26th years of the reign of Her present Majesty, chapter 61, are liable to contribute to the repair of Turnpike Roads in pursuance of the Act of the Session of the 4th and 5th years of the reign of Her present Majesty, chapter 59, and the Acts continuing the same :

For removing doubts as to Highway Boards being liable to contribute to Turnpike Roads.

Where any Turnpike Road is situate in a Parish that is included in a Highway District, an Order may be made on the Highway Board of the District to contribute to the repair of the road under the same circumstances under which an Order for the same purpose may be made on the Parish Surveyor in pursuance of the said Act of the Session of the 4th and 5th years of the reign of Her present Majesty, chapter 59, as continued as aforesaid :

And for the purposes of the said last-mentioned Act, the Highway Board shall be deemed to be substituted for the Parish Surveyor, and any Rate leviable in pursuance of a Precept of the Board for the Rate or assessment levied or to be levied by the said Surveyor as in the said Act mentioned

And "Parish" as used in this Section, shall mean any place in a Highway District that returns a Waywarden or Waywardens to the Board of that District ;

"Parish."

And it is hereby declared, that "Local Act," as used in the 7th section of the said Act of the 25th and 26th years of the reign of Her present Majesty, chapter 61, does not include Turnpike Acts.

"Local Act."

* * * * *

[27 & 28 VICT.]

Highway Amendment.

[C. 101.]

A.D. 1864.



27 & 28 VICT., c. 101.

An Act to amend the Act for the better Management of Highways in England.
(29th July, 1864.)

Revised Statutes,
vol. xiv., p. 967.

WHEREAS it is expedient to amend an Act passed in the Session holden in the 25th and 26th years of the reign of Her present Majesty, chapter 61, and intituled "An Act for the better management of Highways in England : " Be it enacted, &c.

25 & 26 Vict., 61.

Preliminary.

1. The Acts herein-after mentioned may be cited for all purposes by the short titles following ; that is to say,

Short titles of Highway Acts.

The Act passed in the Session of the 5th and 6th years of the reign of King William IV., chapter 50, and intituled "An Act to consolidate and amend the Laws relating to Highways in that part of Great Britain called England," by the short title of the "Highway Act, 1835 :"

The said Act passed in the Session of the 25th and 26th years of the reign of Her present Majesty, chapter 61, by the short title of the "Highway Act, 1862."

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This Act shall be construed with 25 & 28 Vict., 61.

Definition of "Poor Law Parish," "Highway Parish," "Highway Rate," and "County."

This Act by the short title of the "Highway Act, 1864."

All the above-mentioned Acts and any Acts passed or to be passed amending the same shall be included under the short title of "The Highway Acts."

2. This Act, so far as is consistent with the tenor thereof, shall be construed as one with the "Highway Act, 1862."

3. "Poor Law Parish" shall mean a place that separately maintains its own poor :

"Highway Parish" shall mean a place that after the constitution of a Highway District separately maintains its own Highways, and is entitled to return a Waywarden or Waywardens to the Highway Board of the District :

"Highway Rate" shall include any Rate, whether Poor Rate or not, out of the produce of which monies are payable in satisfaction of precepts of a Highway Board :

"County" shall include any Division of a County that has a separate County Treasurer.

Amendments as to Orders of Justices.

Amendment of § 6 of "Highway Act, 1862."

4. Where more Highway Districts than one are comprised in any Order of Justices, whether Provisional or Final, and whether made before or after the passing of this Act, the formation of each of such Districts is to be deemed independent of the formation of any other District, and the Order shall for all purposes be construed and take effect as if a separate Order had been made in respect of each District ;

And any variation in a Provisional Order altering the Parishes in any one or more Districts comprised in that Order shall make that Order provisional only as to the particular District or Districts in which the alterations are made, and not as to any other District or Districts included in the same Order.

Certain places to be deemed places separately maintaining their own Highways.

5. Any Parish, Township, Tithing, Hamlet, or other place having a known legal boundary in which there are no Highways repairable at the expense of the place, or in which the Highways are repaired at the expense of any person, Body Politic, or Corporate, by reason of any grant, tenure, limitation, or appointment of any charitable gift, or otherwise howsoever than out of a Highway Rate or other General Rate, shall, for the purposes of the "Highway Acts," be deemed to be a place separately maintaining its own Highways.

Where part of a Parish is, in pursuance of the "Local Government Act, 1858, Amendment Act, 1861, Section 9," (a) treated as forming part of a District constituted under the "Local Government Act, 1858" for all purposes connected with the repair of Highways and the payment of Highway Rates, but for no other purpose, such part shall, for the purposes of the "Highway Act, 1862," and this Act, be deemed to be a place separately maintaining its own Highways, and capable of being included in a Highway District, without requiring the consent of the Local Board to be given.

Where the Highways of one part of a Parish are, in pursuance of a Private Act of Parliament, repairable out of a different Rate from that out of which the Highways of the other part are repairable, each of such parts shall, for the purposes of the "Highway Acts," be deemed to be a place separately maintaining its own Highways.

Part of § 5 of "Highway Act, 1862," repealed, and other provisions enacted.

6. There shall be repealed so much of the 5th Section of the "Highway Act, 1862," as provides that, "when it is proposed that only part of a County shall be divided into a Highway District, not less than 2 out of the 5 Justices making such proposal shall be resident in the said District ;" and in lieu thereof be it enacted, That when it is proposed that only part of a County is to be constituted a Highway District, not less than 2 out of the 5 Justices making such proposal shall be resident in the said District, or acting in the Petty Sessional Division in which such District or some part thereof is situate.

Amendment of § 7 of "Highway Act, 1862," as to combination of Townships, &c.

7. The power given by the 7th Section of "The Highway Act, 1862," of combining Townships, Tithings, Hamlets, or places separately maintaining their own Highways, and situate in a Poor Law Parish, shall extend to combining any 2 or more of such Townships, Tithings, Hamlets, or places, and any combination so formed shall for all the purposes of the Highway Acts be deemed to be a Highway Parish.

Where a Township, Tithing, Hamlet, or other place separately maintaining its own Highways is situate in 2 or more Poor Law Parishes, each part of such Township, Tithing, Hamlet, or other place may be combined with the Parish in which that part is situate.

The Justices may, by their Provisional and Final Order, declare that any Poor Law Parish within their jurisdiction, or residue of a Poor Law Parish, after excluding such part, if any, as is prohibited by the "Highway Act, 1862," either wholly or without the consent of the Governing Body, from being included in the Highway District, shall henceforward become a Highway Parish ;

And upon such declaration being made such Poor Law Parish, or residue of a Poor Law Parish, shall thereafter be a Highway Parish entitled to return a Waywarden or Waywardens to the Highway Board of the District in which it is included ;

And no Rate shall be separately levied for the maintenance of the Highways, and no separate Waywardens be elected in any Township, Tithing, Hamlet, or other subdivision of such Poor Law Parish or residue of a Poor Law Parish.

Where, previously to the passing of the Provisional Order forming a Highway District, no Surveyors or Waywardens have been elected within any Highway Parish in that District, and where the mode of electing a Waywarden or Waywardens in such Parish is not provided by this Act or the "Highway Act, 1862," the Justices shall, by their Provisional and Final Orders constituting the District, or by any subsequent Provisional and Final Orders, make provisions for the annual election of a Waywarden or Waywardens for such Parish.

(a) 24 & 25 Vict., 61 : now superseded by the "Public Health Act, 1875," (38 & 39 Vict., 55, § 216.)

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8. Where a Parish or place separately maintaining its own Highways is situate partly within and partly without the limits of a Borough, the Justices may by their Provisional and Final Orders include in a Highway District the outlying part of such Parish or place ;

Provision for places partly within and partly without a Borough.

And where the outlying part of a Parish or place situate as aforesaid has been, previously to the passing of this Act, or may be hereafter, included in a Highway District, each part of such Parish or place shall for all the purposes of the Highway Acts be deemed to be a place separately maintaining its own Highways ;

And a Waywarden or Waywardens shall be elected by the Ratepayers in each such part at such time and in such manner as may be provided by the said Justices.

9. The Justices in Petty Sessions may appoint Overseers, or otherwise deal with any extra-parochial place with a view to constituting it a Highway Parish or part of a Highway Parish, in the same manner as the Justices may deal with such place for the purpose of constituting it a place or part of a place maintaining its own poor, in pursuance of the powers for that purpose given by the Act of the 20th year of the reign of Her present Majesty, chapter 19.

Power of Justices as to extra-parochial places.

10. The paragraph No. 5 in the 6th section of the "Highway Act, 1862," shall be repealed, and in lieu thereof be it enacted,

Part of § 6 of "Highway Act, 1862," as to meeting of Board repealed, and other provisions enacted.

The first meeting of the Highway Board after the formation of a District shall be held at such time as may be appointed by the Provisional or Final Order of the Justices, so that the time appointed be not more than 7 days after the expiration of the time limited by Law for the election of Waywardens, or, in the case of a special day being appointed for such election as herein-after mentioned, be not more than 21 days after that day.

The day appointed for the first meeting of the Board shall for all the purposes of the "Highway Acts" be deemed to be the day of the formation of the District ;

And the Surveyor for the time being of every Parish within the District shall continue in office until 7 days after the appointment of the District Surveyor, and no longer.

11. In forming a Highway District under the "Highway Act, 1862," the Justices may, for the purpose of avoiding delay in bringing the Act into operation, appoint by their Final Order a day on which the first election of Waywardens as members of the Highway Board is to take place in the District.

Power to Justices to bring Highway Act into operation on a particular day.

On the day appointed for the election Waywardens shall be elected in every Parish in the District entitled to elect such officers by the same persons and in the same manner by and in which Waywardens are elected under the "Highway Act, 1862," and all the provisions of the "Highway Acts" relating to the qualifications of Surveyors or Waywardens, and to the appointment of Surveyors and Waywardens by Justices in the event of no election taking place, shall apply accordingly ;

25 & 26 Vict., 61, § 10.

But the Waywardens elected under this Section shall continue in office only until the time at which the next annual election of Surveyors would have taken place in the several Parishes of the District if the same had not been constituted a Highway District, and at that time new Waywardens shall be elected in manner provided by the "Highway Acts."

12. No Order of the Justices forming a Highway District shall be invalidated by reason of its not being published in the *London Gazette* ;

Publication of Orders in *Gazette* made permissive.

And where any reference is made in any Section of the "Highway Act, 1862," to the date of the publication in the *Gazette* of the Order, such Section shall be construed as if the date of the making of the Final Order under which the District is formed were substituted for "the date of the publication in the *Gazette* of the Order under which the District is formed ;"

And any copy of the Provisional or Final Order of the Justices forming a Highway District, certified under the hand of the Clerk of the Peace to be a true copy, shall be receivable in all Courts of Justice and in all legal proceedings as evidence in the formation of the District and of the matters in the said Order mentioned.

13. Contiguous places situate in different Counties and places situate partly in one County and partly in another County or Counties shall, for the purpose of being united in one Highway District, be deemed to be subject to the jurisdiction of the Justices of any County, who may make a Provisional and Final Order constituting them an Highway District, in the same manner as if all such places or parts of places were situate in such last-mentioned County ;

As to union of Parishes in different Counties.

Subject to this proviso, that the Provisional and Final Orders of the Justices of the said County shall be of no validity unless Provisional and Final Orders to the said effect are passed either concurrently with or subsequently to the first-mentioned Provisional and Final Orders by the Justices of every other County in which any of the said places or parts of places are situate.

14. The approval of the Justices of any County to any Provisional Order made by the Justices of another County affecting any place in such first-mentioned County, in pursuance of the 39th Section of the "Highway Act, 1862," shall be testified by Provisional and Final Orders of the Justices of the said first-mentioned County.

Amendment of § 39 of "Highway Act, 1862."

The powers conferred on Justices by the 39th Section of the "Highway Act, 1862," shall be deemed to extend to the separation of any Townships, Tithings, Hamlets, or places separately maintaining their own Highways which may have been consolidated by any previous Order of the Justices, and to an alteration in the number of Waywardens of any Parish.

15. Where, after the formation of an Highway District, an application is made by any Parish in that District to any Court of General or Quarter Sessions, praying that the said Parish may be removed from that District, all costs incidental to or consequential on such application and the removal of the said Parish shall, unless the Court otherwise directs, be paid by the Parish that has made the application in such manner as the said Court may direct.

As to the costs of Parishes applying to be removed from one District to another.

The amount of such costs shall be raised in the same manner as if they were expenses incurred in maintaining and keeping in repair the Highways of that Parish.

16. No Order of the Justices forming a Highway District, whether made before or after the passing of this Act, shall be void by reason that it includes in such District a place which the

As to validity of Order of Justices.

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[27 & 28 VICT.]

Highway Amendment.

[C. 101.]

Extent of powers of Justices.

Definition of "Provisional and final Orders."
25 & 26 Vict., 61, § 6.

Appointment and Vote of Waywardens.

Power to Waywardens to contract for supply or cartage of materials.

Provisions for discontinuance of maintenance of unnecessary Highways.
4 & 5 Will. IV., 50, § 86.

Highway Board may contract to repair Highways for the repair of which other parties are liable.

Amendment of § 24 of "Highway Act, 1862."

Amendment of § 35 of "Highway Act, 1862."

Justices are not entitled to include under the Provisions of this Act or the "Highways Act, 1862," or one of such Acts ;

And any Order containing such prohibited place shall be construed and take effect as if that place had not been mentioned therein.

All expenses properly incurred by the Justices of any County in maintaining the validity of any Provisional or Final Order made by them shall be payable out of the County Rate of that County.

17. All powers and jurisdictions vested in Justices by the "Highway Act, 1862," and this Act, or either of such Acts, may from time to time be exercised in relation to Highway Districts, Highway Boards, and Highway Parishes already formed, as well as upon the occasion of forming new Highway Districts, Boards, or Parishes ;

And where an alteration is made in part only of a Highway District the residue of that District shall not be affected thereby, but shall continue subject to the "Highway Acts" in the same manner as if no such alteration had been made.

18. The expression "Provisional and Final Order," as used in this Act, shall mean a Provisional and Final Order passed and published in manner provided by this Act and the "Highway Act, 1862," with the necessary variations as to notices and otherwise.

Miscellaneous Amendments.

19. Every Waywarden, before taking his seat as a member of a Highway Board, shall produce a Certificate of his having been duly elected or appointed a Waywarden, and such Certificate shall, in the case of an elected Waywarden, be signed by the Chairman of the Vestry or other meeting at which he was elected ;

And in the case of a Waywarden appointed by Justices, be signed by the Justices making the appointment.

A Waywarden may sit as such for more places than one, but he shall be entitled to one vote only as Waywarden.

20. Whereas doubts are entertained whether the 46th Section of the "Highway Act" of 1835 applies to a Highway District : Be it enacted, That that Section shall not apply to the Highway Board of any Highway District or to any Parish within any Highway District.

Notwithstanding anything contained in the Act of the Session of the 26th and 27th years of the reign of Her present Majesty, chapter 61, or in any other Act, any Waywarden may contract for the supply or cartage of materials within the Parish for which he is Waywarden, with the license of 2 Justices assembled at Petty Sessions, such license to be granted on the application of the Clerk of the Highway Board, who must be authorised to make such application by a resolution of his Board assembled at a meeting of which notice has been given.

21. When any Highway Board consider any Highway unnecessary for public use, they may direct the District Surveyor to apply to 2 Justices to view the same, and thereupon the like proceedings shall be had as where application is made under the "Highway Act, 1835," to procure the stopping up of any Highway, save only that the Order to be made thereupon, instead of directing the Highway to be stopped up, shall direct that the same shall cease to be a Highway which the Parish is liable to repair, and the liability of the Parish shall cease accordingly ;

And for the purpose of such proceedings under this enactment, such variation shall be made in any notice, certificate, or other matter preliminary to the making of such Order as the nature of the case may require :

Provided, that if at any time thereafter, upon application of any person interested in the maintenance of such Highway, after one month's previous notice, in writing thereof, to the Clerk of the Highway Board for the District in which such Highway is situated, it appear to any Court of General or Quarter Sessions of the Peace that from any change of circumstances since the time of the making of any such Order as aforesaid under which the liability of the Parish to repair such Highway has ceased the same has become of public use, and ought to be kept in repair by the Parish, they may direct that the liability of the Parish to repair the same shall revive from and after such day as they may name in their Order, and such liability shall revive accordingly as if the first-mentioned Order had not been made ;

And the said Court may by their Order direct the expenses of and incident to such application to be paid as they may see fit.

22. The Highway Board of any District may from time to time contract for any time not exceeding 3 years with any person or body of persons, corporate or unincorporate, to repair any Highways, Turnpike Roads, or roads over County or other Bridges, or any part thereof, for the repairing of which such persons or body of persons are liable ;

And any persons or body of persons liable to repair any roads may contract with the Highway Board for the repairing any Highways, inclusive as aforesaid, or any part thereof, which the Highway Board is liable to make or repair ;

And the money payable under any contract made in pursuance of this Section shall be raised in the same manner and be paid out of the same Rates as would have been applicable to defray the expenses of the repair of such Highways if no contract had been made in respect thereto.

23. Section 34 of the "Highway Act, 1862," shall be construed as if, instead of the words "shall be adjudged in the manner provided by the principal Act to be out of repair," the words were substituted, "shall be adjudged in manner provided by the Highway Act, 1862, to be out of repair."

24. The Highway Board may apply, under Section 35 of the "Highway Act of 1862," for the purpose of making any Highway to which that Section refers a Highway to be repaired and maintained by the Parish in which the same is situate, and upon such application being made the same proceedings may be had as upon the application of the person or Corporation liable to repair the same.

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[27 & 28 VICT.]

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25. The 74th Section of the "Highway Act, 1835," shall be repealed, and instead thereof be it enacted, If any horse, mare, gelding, bull, ox, cow, heifer, steer, calf, mule, ass, sheep, lamb, goat, kid, or swine is at any time found straying on or lying about any Highway, or across any part thereof, or by the sides thereof (except on such parts of any Highway as pass over any common or waste or uninclosed ground), the owner or owners thereof shall, for every animal so found straying or lying, be liable to a penalty not exceeding 5s., to be recovered in a summary manner, together with the reasonable expense of removing such animal from the Highway where it is found to the fields or stable of the owner or owners, or to the common pound (if any) of the Parish where the same shall be found, or to such other place as may have been provided for the purpose :

Provided always, that no owner of any such animal shall in any case pay more than the sum of 30s., to be recovered as aforesaid, over and above such reasonable expenses as aforesaid, including the usual fees and charges of the authorised keeper of the pound :

Provided also, that nothing in this Act shall be deemed to extend to take away any right of pasturage which may exist on the sides of any Highway.

26. Any notice in respect of which no other mode of service is provided by the Highway Board in pursuance of powers in that behalf conferred on them, and any precept, summons, or Order issued by the Highway Board, may be served,—

By delivery of the same personally on the party required to be served ; or

By leaving the same at the usual or last known place of abode of such party as aforesaid ; or

By forwarding the same by Post as a prepaid letter addressed to the usual or last known place of abode of such party.

In proving service of a document by Post it shall be sufficient to prove that the document was properly directed, and that it was put as a prepaid letter into the Post Office ;

And in serving notice on the Overseers or the Waywardens (if more than one) of any Parish it shall be sufficient to serve the same on any one of such Officers in a Parish.

27. The Schedule annexed to the "Highway Act of 1862" shall be repealed so far as relates to the proceedings of Highway Boards, and the proceedings of Highway Boards shall, after the passing of this Act, be subject to the regulations contained in the 1st Schedule to this Act annexed.

28. The 43rd Section of the "Highway Act of 1862" shall be construed as if in the 2nd article thereof the words "not exceeding £5" were omitted.

29. A Justice of the Peace acting for the County in which a Highway District is situate, if he is resident in any place which is prohibited either altogether or without the consent of the Local Authority from being included in a Highway District by the 7th Section of the "Highway Act of 1862," and which is surrounded by or adjoins in any part such Highway District, shall, by virtue of his office, be a member of the Highway Board of such District, subject to this qualification, that if in pursuance of this Section any Justice of the Peace would be entitled to be a member of 2 or more Highway Boards in the same County, he shall, by letter under his hand, addressed to the Clerk of the Highway Board for which he elects to act, and by him to be transmitted to the Clerk of the Peace of the County, declare of which of the said Highway Boards he elects to be a member, and having made that election he shall be bound thereby, and shall not be entitled by virtue of his office of Justice to be a member of any other of the said Boards.

30. The appointment of any Officer of a Highway Board may be made by a minute of the Board, signed by the Chairman and countersigned by the Clerk of the Board, and any appointment so made shall be as valid as if it were made under the seal of the Board.

31. The power of appointing paid Collectors of Highway Rates with the consent of the inhabitants in Vestry assembled, which is vested in a Surveyor by the "Highway Act, 1835," and all the provisions of that Act relating to such appointment, shall be vested in and extend to any Waywarden required to levy Rates in pursuance of the "Highway Act, 1862," and this Act, or either of such Acts ;

And for the purposes of this Act any meeting of Ratepayers entitled to elect a Waywarden or Waywardens shall be deemed to be included under the expression "Inhabitants in Vestry assembled," as used in this Section, and the "Highway Acts."

As to Expenses of Boards.

32. Sections 20, 21, 22, 23, and 24 of the "Highway Act, 1862," relating to the expenses of the Board, shall be repealed, but such repeal shall not affect any Rate made previously to the passing of this Act, or any legal proceeding or remedy for enforcing the same.

The salaries of the Officers appointed for each District, and any other expenses incurred by any Highway Board for the common use or benefit of the several Parishes within such District, shall be annually charged to a District Fund to be contributed by and charged upon the several Highway Parishes within such District in proportion to the rateable value of the property in each Parish, but the expenses of maintaining and keeping in repair the Highways of each Highway Parish within the District, and all other expenses legally payable by the Highway Board in relation to such Parish, including any sums of money that would have been payable out of the Highway Rates of such Parish if the same had not become part of a Highway District, except such expenses as are in this Act authorised to be charged to the District Fund, shall be a separate charge on each Parish.

The rateable value of the property in each Parish shall be ascertained according to the Valuation List or other estimate for the time being in force in such Parish for the purposes of the Poor Rate, or if no such Valuation List or estimate be in force, then in such manner as may be determined by the Justices in Petty Sessions, subject to an appeal by any person aggrieved to the next General or Quarter Sessions.

§ 74, of 5 & 6 Will. IV., 50, repealed and other Provisions made as to cattle found straying, &c., on Highways.

As to service of notices issued by Highway Board.

Schedule to "Highway Act, 1862," repealed, and other Regulations made. Amendment of § 48, of "Highway Act, 1862." Qualification of ex-officio Waywardens.

Appointment of Officers of Board.

Power to appoint paid Collectors of Highway Rates. 5 & 6 Will. IV., 50, § 36.

Repeal of §§ 20, 21, 22, 23, and 24 of "Highway Act, 1862." Expenses how to be charged.

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A.D. 1864.

[27 & 28 VICT.]

Highway Amendment.

[C. 101.]

Mode of defray-
ing expenses of
the Highway
Board.

33. For the purpose of obtaining payment from the several Highway Parishes within their District of the sums to be contributed by them, the Highway Board shall order Precepts to be issued to the Waywardens or Overseers of the said Parishes according to the Provisions herein-after contained, stating the sum to be contributed by each Parish, and requiring the officer to whom the Precept is addressed, within a time to be limited by the Precept, to pay the sum therein mentioned to the Treasurer of the Board.

Where a Highway Parish is not a Parish separately maintaining its own Poor, or where in any Highway Parish it has, for a period of not less than 7 years immediately preceding the passing of the "Highway Act, 1862," been the custom of the Surveyor of Highways for such Parish to levy a Highway Rate in respect of property not subject by Law to be assessed to Poor Rates, the Precept of the Highway Board shall be addressed to the Waywarden of the Parish, and in all other cases it shall be addressed to the Overseers.

Where the Precept is addressed to a Waywarden he shall pay the sum thereby required out of a separate Rate, and such separate Rate shall, in the case of a Parish in which for such period aforesaid it has been the custom of the Surveyor of Highways to levy a Highway Rate in respect of property not subject by Law to be assessed to Poor Rate, be assessed on and levied from the persons and in respect of the property on, from, and in respect of which the same has been assessed and levied during such period as aforesaid, and in all other cases such Rate shall be assessed on and levied from the persons and in respect of the property on, from, and in respect of which a Poor Rate would be assessable and leviable if the Parish of which he is a Waywarden were a place separately maintaining its own Poor.

No Rate leviable by a Waywarden under this Act shall be payable until the same has been published in manner in which Rates for the Relief of the Poor are by Law required to be published.

A Waywarden shall account to the Highway Board for the amount of all Rates levied by him, and at the expiration of his term of office shall pay any surplus in his hands arising from any Rate so levied, above the amount for which the Rate was made, to the Treasurer of the Highway Board, to the credit of the Parish within which such Rate was made, and such surplus shall go in reduction of the next Highway Rate that may be leviable in such Parish.

Where the Precept is addressed to the Overseers they shall pay the sum thereby required out of a Poor Rate to be levied by them, or out of any monies in their hands applicable to the Relief of the Poor.

No contribution required to be paid by any Parish at any one time in respect of Highway Rates shall exceed the sum of 10*d.* in the pound, and the aggregate of contributions required to be paid by any Parish in any one year in respect of Highway Rates shall not exceed the sum of 2*s.* 6*d.* in the pound, except with the consent of four-fifths of the Ratepayers of the Parish in which such excess may be levied present at a meeting specially called for the purpose, of which 10 days previous notice has been given by the Waywarden of such Parish, and then only to such extent as may be determined by such meeting.

All sums of money payable in pursuance of the Precepts of a Highway Board shall, whether they are or not payable by the Overseers of the Poor, be subject to all charges to which ordinary Highway Rates are subject by Law.

Power to levy
Rates for
making pay-
ments to High-
way Board.

34. All Waywardens and Overseers to whom Precepts of a Highway Board are hereby directed or authorised to be issued shall within their respective Parishes have the same powers, remedies, and privileges, for and in respect of assessing and levying any Rates required to be levied for making payments to a Highway Board, in the case of Overseers, as they have in assessing and levying ordinary Rates for the Relief of the Poor, and in the case of Waywardens as they would have if the Parish of which they are Waywardens were a place separately maintaining its own Poor, and they were Overseers thereof, and the Rate to be levied by them were a duly authorised Poor Rate.

Mode of enforc-
ing payments to
Highway
Boards.

35. If any payment required to be made by the Overseers or Waywardens of any Parish of monies due to a Highway Board is in arrear, it shall be lawful for any Justice, on application under the hand of the Chairman for the time being or by the Clerk of such Board, to summon the said Overseers or Waywardens to show cause at Petty Sessions why such payment has not been made;

And the Justices at such Petty Sessions, after hearing the complaint preferred on behalf of the Board, may, if they think fit, cause the amount of payment in arrear, together with the costs occasioned by such arrear, to be levied and recovered from the said Overseers or Waywardens, or any of them, in like manner as monies assessed for the Relief of the Poor may be levied and recovered, and the amount of such arrear, together with the costs aforesaid, when levied and recovered, to be paid to the said Board.

Accounts of Board.

§§ 25, 26, and 30
of "Highway
Act, 1862," re-
pealed, and
other Provi-
sions substi-
tuted.

36. The 25th, 26th, and 30th Sections of the "Highway Act, 1862," shall be repealed, but such repeal shall not affect any proceeding commenced previously to the passing of this Act, and instead thereof the following provisions shall be enacted; that is to say,

The accounts of every Highway Board shall be made up and balanced to the 31st of December in every year.

After the expiration of not less than 14 days nor more than 28 days from the 31st of December, the accounts shall be examined by the Board, and signed by the Chairman.

The Board may, if they think fit, appoint any fit person not being a member or officer of the Board to audit their accounts, and may award to him a reasonable compensation, to be paid out of the District Fund.

Within 30 days after the signature of the accounts by the Chairman the Board shall cause a statement showing the receipt and expenditure in respect of each Parish, and the appor-

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tioned part of expenditure chargeable thereto in respect of the District Fund, and such other particulars and in such form as the *Secretary of State* may direct, to be printed, and sent by Post or otherwise to each member of the Board, and to the Overseers of every Parish within the District having Overseers; and the Clerk of the Board shall furnish a Copy of such statement to any Ratepayer or owner of property situate within the District, on his application, and on the payment of a sum not exceeding 1*d.*

The books of account of the Board shall at all seasonable times be open to the inspection of any Ratepayer of any Highway Parish within the District of the Board.

37. If any person feels aggrieved by any Rate levied on him for the purpose of raising monies payable under a Precept of a Highway Board on the ground of incorrectness in the valuation of any property included in such Rate, or of any person being put on or left out of such Rate, or of the inequality or unfairness of the sum charged on any person or persons therein, he may appeal to the Justices in Special Sessions in manner provided by the Act of the Session of the 6th and 7th years of the reign of His Majesty King William IV., chapter 96, Section 6 and 7, and all the provisions of the said Sections shall be applicable to such appeal.

Persons aggrieved by Rates levied may appeal in manner provided by 6 & 7 Will. IV., 96.

38. Where any Waywarden of a Highway Parish of a District, or any ratepayer of such Parish, feels aggrieved in respect of the matters following:

Power to appeal to Quarter Sessions against items of expense and expenditure, &c.

- (1.) In respect of any Order of the Highway Board for the repair of any Highway in his Parish on the ground that such Highway is not legally repairable by the Parish, or in respect of any other Order of the Board on the ground that the matter to which such Order relates is one in regard to which the Board have no jurisdiction to make an Order;
- (2.) In respect of any item of expense charged to the separate account of his Parish on the ground that such item of expense has not in fact been incurred or has been incurred in respect of a matter upon which the Board have no authority by Law to make any expenditure whatever;
- (3.) In respect of any item of expenditure charged to the District Fund on the ground that such item of expense has not in fact been incurred, or has been incurred in respect of a matter upon which the Board has no authority by Law to make any expenditure whatever;
- (4.) In respect of the contribution required to be made by each Parish to the District Fund on the ground that such amount, when compared with the contribution of other Parishes in the District, is not according to the proportion required by this Act;

He may, upon complying with the conditions herein-after mentioned appeal to the Court of General or Quarter Sessions having jurisdiction in the District;

But no appeal shall be had in respect of any exercise of the discretion of the Board in matters within their discretion; and no appeal shall be had except in respect of the matters and upon the grounds herein-before mentioned.

39. No appeal shall be entertained by any Court of General or Quarter Sessions in pursuance of this Act unless the following conditions have been complied with:

Conditions of Appeal to General or Quarter Sessions

- (1.) Notice of the intention of appeal must be served by the appellant on the Clerk of the Highway Board in the case of an appeal against an Order within 2 months after the Order, and in the case of an appeal in respect of any item of expense or contribution within one month after the statement of the account of the Board has been sent to each member of the Board as herein-before mentioned;
 - (2.) The notice must state the matter appealed against, and the ground of the appeal:
- On the receipt of the notice the Board may serve a counter-notice on the appellant, requiring him to appear in person or by his Agent at the next meeting of the Board and support his appeal. On hearing the appellant the Board may rectify the matter complained of, and if they do so to a reasonable extent, and tender to the appellant a reasonable sum for the costs of his attendance, it should not be lawful for the appellant to proceed with his appeal.

In any other case the appellant may proceed with his appeal, and the reasonable costs of his attendance on the Board shall be deemed part of the costs of the appeal.

40. If at any time after notice of appeal has been given it appears to the Court of General or Quarter Sessions, on the application of either party in the presence of or after notice has been given to the other party, that the matter in question in such appeal consists wholly or in part of matters of mere account which cannot be satisfactorily tried by the Court, it shall be lawful for such Court to order that such matters, either wholly or in part, be referred to the arbitration of one or more persons, to be appointed by the parties, or, in case of disagreement, by the Court;

Power to refer Case to Arbitration.

And the award made on such arbitration shall be enforceable by the same process as the Order of the Court of Quarter Sessions.

41. The Provisions of the "Common Law Procedure Act, 1854," relating to compulsory references, shall be deemed to extend to arbitrations directed by the Court of Quarter Sessions;

Provisions of 17 & 18 Vict., 125, incorporated.

And the word "Court" in the said Act shall be deemed to include the Court of Quarter Sessions.

42. If upon the hearing of the appeal it appears to the Court that the question in dispute involves an inquiry as to whether a road is or is not a Highway repairable by the public, or an inquiry as to any other important matter of fact, the Court may either themselves decide such question, or may impanel a jury of 12 disinterested men out of the persons returned to serve as Jurymen at such Quarter Sessions, and submit to such Jury such questions in relation to the matters of fact in dispute as the Court think fit;

Proceedings on Appeal.

And the verdict of such Jury, after hearing the evidence adduced, shall be conclusive as to the questions submitted to them.

The questions so submitted shall be in the form and shall be tried as nearly as may be in the manner in which feigned issues are ordinarily tried, and the Court shall decide the parties to be plaintiffs and defendants in such trials.

Subject as aforesaid, the Court may, upon the hearing of any appeal under this Act, confirm, reverse, or modify any Order of the Highway Board, or rectify any account appealed against.

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Costs of Appeal.

43. If the appellant is successful, the costs shall, unless the Court otherwise orders, be paid by the Board, and shall be charged to the Parishes within the jurisdiction of the Board other than the Parish to which the appellant belongs in the same proportions in which such Parishes contribute to the Common Fund of the Board.

If the appellant is unsuccessful, the Board, if the Waywarden be the appellant, may charge the costs of the appeal to the Parish to which the appellant belongs in the same manner as if they were expenses incurred in repairing the Roads in such Parish, and may levy the sum accordingly, and may carry the sum so levied to the account of the several Parishes within the jurisdiction of the Board, other than the Parish to which the appellant Waywarden belongs, in the same manner as if they were expenses contributed by such Parishes to the Common Fund of the Board ;

But if some Ratepayer other than the Waywarden is the appellant, the Court may order the costs of the appeal to be paid by such appellant ; and such costs shall be recoverable in the same manner as a penalty is recovered under the " Highway Act, 1862."

Jurisdiction as to Districts in different Counties.

44. Places situate in different Counties, and places situate partly in one County and partly in another County, when united in one Highway District, shall, for all matters connected with the provisions of this Act relating to appeals to Quarter Sessions against accounts, be deemed to be subject to the jurisdiction of the Justices of the County in which the District is situate to which such places shall have been united by any Provisional and Final Order or Orders, or to which after the passing of this Act any such District shall be declared to be subject by the Orders constituting the same, in the same manner as if all such places or parts of places were situate in such County.

Supplemental Provisions.

In case of default of Highway Board appointing Officers.

45. If the Highway Board of a District make default in appointing a Treasurer, Clerk, and District Surveyor, or any of such Officers, in pursuance of the " Highway Act, 1862," within 3 months after the day fixed by the Justices for the holding of the first meeting of the Board, or within 3 months after a vacancy occurring in any of the said offices, the Justices in General or Quarter Sessions assembled may, if they think fit, appoint a person to any of the said offices in respect of which the default has been made, and may fix the salary to be paid to the officer appointed ; and any such appointment shall take effect and salary be recoverable in the same manner as if the Officer appointed by the Justices had been appointed by the Highway Board of the District ;

And it shall not be lawful for such Board, without the consent of the said Justices, to remove any Officer appointed by them under this Section, or to lessen his salary within one year from the date of his appointment.

Jurisdiction of Justices in Petty Sessions.

46. The Justices assembled in Petty Sessions at their usual place of meeting may exercise any jurisdiction which they are authorised under the " Highway Acts " or any of them to exercise in Special Sessions ;

And no Justice of the Peace shall be disabled from acting as such at any Petty or Special or General Quarter Sessions in any matter merely on the ground that he is by virtue of his office a member of any Highway Board complaining, interested, or concerned in such matter, or has acted as such at any meeting of such Board.

Power of Highway Board to make improvements and borrow money for the same but previously to cause an estimate to be made.

47. A Highway Board may make such improvements as are herein-after mentioned in the Highways within their jurisdiction, and may, with the approval of the Justices in General or Quarter Sessions assembled, borrow money for the purpose of defraying the expenses of such improvements :

Previously to applying for the approval of the Justices the Highway Board shall cause an estimate of the expense of the improvements to be made, and 2 months at the least before making their application shall give notice of their intention so to do.

The notice shall state the following particulars :

- (1.) The nature of the work, the estimated amount of expense to be incurred, and the sum proposed to be borrowed :
- (2.) The Parish or Parishes within the District by which the sum borrowed and the interest thereon is to be paid, and in case of more Parishes than one being made liable to pay the principal and interest the annual amounts to be contributed by each Parish towards the payment thereof :
- (3.) The number of years within which the principal monies borrowed are to be paid off, not exceeding 20 years, and the amount to be set apart in each year for paying off the same :
- (4.) The Sessions at which the application is to be made.

Notice shall be given as follows :

- (1.) By transmitting a copy to the Clerk of the Peace for the County or Division :
- (2.) By placing a copy of such notice for 3 successive Sundays on the Church Door of every Church of the Parish or Parishes on behalf of which such works are to be done, or, in the case of any place not having a Church, in some conspicuous position in such place.

Upon the hearing of the application any person or persons may oppose the approval of the Justices being given, and it shall be lawful for the Justices to give or withhold their approval, with or without modification, as they think just.

All monies borrowed in pursuance of this Act, together with the interest thereon, shall be a first charge on the Highway Rates of each Parish liable to contribute to the payment thereof, after paying the sums due to the Highway Board on account of the District Fund, in the same manner, so far as the creditor is concerned, as if the money had been borrowed on account of each Parish alone ; and the sums necessary to repay the said borrowed monies, with interest, shall in each such Parish be recoverable in the same manner as if they were expenses incurred by the Board in keeping in repair the Highways of that Parish.

But it shall be the duty of the Highway Board, in case of any one Parish paying more than its

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share of such borrowed money, or of the interest thereon, to make good to that Parish the excess so paid out of the Rates of the other Parishes liable to contribute thereto.

The Justices may from time to time make General Orders in relation to the mode in which applications are to be made to them for their consent under this Act to the borrowing of any monies.

48. The following works shall be deemed to be improvements of Highways :

Definition of improvements.

- (1.) The conversion of any road that has not been stoned into a stoned road :
- (2.) The widening of any road, the cutting off the corners in any road where land is required to be purchased for that purpose, the levelling roads, the making any new road, and the building or enlarging Bridges :

- (3.) The doing of any other work in respect of Highways beyond ordinary repairs essential to placing any existing Highway in a proper state of repair.

49. Any Parish may, with the consent of its Waywarden, contribute to any improvements made in another Parish, whether situate or not in the same District, if such first-mentioned Parish consider such improvements to be for its benefit.

Power for Parishes and Districts to contribute to improvements.

And any Highway Board may contribute to any improvements made in another District if such improvements are, in the opinion of the Highway Board of the first-mentioned District, for the benefit of their District.

The contribution to be made by one Parish to another shall be payable in the same manner as if such contributions were monies due from the contributing Parish in respect of expenses incurred in keeping in repair the Highways of that Parish, and monies contributed by one District to another District shall be payable out of the Common Fund of the contributing District.

50. The clauses^(a) of "The Commissioners Clauses Act, 1847," with respect to mortgages to be created by the Commissioners, shall form part of and be incorporated with this Act, and any mortgagee or assignee may enforce payment of his principal and interest by appointment of a receiver.

Certain clauses of 10 & 11 Vict., 16, incorporated.

In the construction of the said clauses "the Commissioners" shall mean "the Highway Board."

Mortgages and transfers of mortgages shall be valid if made in the forms prescribed by the last-mentioned Act, or in the forms appearing in the 2nd Schedule annexed to this Act, or as near thereto as circumstances admit.

51. From and after the passing of this Act if any person shall encroach by making or causing to be made any building, or pit, or hedge, ditch, or other fence, or by placing any dung, compost, or other materials for dressing land, or any rubbish, on the side or sides of any carriageway or cartway within 15 ft. of the centre thereof, or by removing any soil or turf from the side or sides of any carriageway or cartway, except for the purpose of improving the road, and by Order of the Highway Board, or, where there is no Highway Board, of the Surveyor, he shall be subject on conviction for every such offence to any sum not exceeding 40s., notwithstanding that the whole space of 15 ft. from the centre of such carriageway or cartway has not been maintained with stones or other materials used in forming Highways ;

As to encroachment on Highways.

And it shall be lawful for the Justices assembled at Petty Sessions, upon proof to them made upon oath, to levy the expenses of taking down such building, hedge, or fence, or filling up such ditch or pit, and removing such dung, compost, materials, or rubbish as aforesaid, or restoring the injury caused by the removal of such soil or turf, upon the person offending :

Provided always, that where any carriageway or cartway is fenced on both sides no encroachment as aforesaid shall be allowed whereby such carriageway or cartway shall be reduced in width to less than 30 ft. between the fences on each side.

52. The Highway Board may and is hereby authorised to contract for purchasing, getting, and carrying the materials required for the repair of the Highways, and for maintaining and keeping in repair all or any part of the Highways of any Parish within their Highway District, for any period not exceeding 3 years.

Power to contract for materials for repairing Highways.

53. A Highway Board for the purpose of improving the Highways within their District may purchase such lands or easements relating to lands as they may require ;

8 & 9 Vict., 18, and 28 & 24 Vict., 106, incorporated.

And the "Lands Clauses Consolidation Act, 1845," and the Act amending the same passed in the Session of the 23rd and 24th years of the reign of Her present Majesty, chapter 106, shall be incorporated with this Act, with the exception of the Clauses relating to the purchase of land otherwise than by agreement.

In the construction of this Act and the said incorporated Acts this Act shall be deemed to be the Special Act, and the Board shall be deemed to be the promoters of the undertaking, and the word "Land" or "Lands" shall include any easement in or out of lands.

FIRST SCHEDULE.

Proceedings of Highway Boards.

- (1.) The Board shall meet for the despatch of business, and shall from time to time make such regulations with respect to the summoning, notice, place, management, and adjournment of such meetings, and generally with respect to the transaction and management of business, including the quorum at meetings of the Board, as they think fit, subject to the following conditions :

- (a.) The 1st meeting after the formation of the District shall be held at the time and place fixed by the Order of the Justices in that behalf ;

(a) These are §§ 75—88, and Schedules B. and C.

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- (b.) One ordinary meeting shall be held in each period of 4 months, and of such meetings one shall be held on some day between the 7th and 14th days of April ;
- (c.) An extraordinary meeting may be summoned at any time, on the requisition of 3 members of the Board, addressed to the Clerk of the Board ;
- (d.) The quorum to be fixed by the Board shall consist of not less than 3 members ;
- (e.) Every question shall be decided by a majority of votes of the members voting on that question ;
- (f.) The names of the members present at a meeting shall be recorded.
- (2.) The Board shall at the first meeting, and afterwards from time to time at their first meeting after each annual appointment of members of the Board as hereafter mentioned, appoint one of their members to be Chairman and one other of their members to be a Vice-chairman for the year following such choice.
- (3.) If any casual vacancy occur in the office of Chairman or Vice-chairman, the Board shall, as soon as they conveniently can after the occurrence of such vacancy, choose some member of their number to fill such vacancy ; and every such Chairman or Vice-chairman so elected as last aforesaid shall continue in office so long only as the person in whose place he may be so elected would have been entitled to continue if such vacancy had not happened.
- (4.) If at any meeting the Chairman is not present at the time appointed for holding the same, the Vice-Chairman shall be the Chairman of the meeting ; and if neither the Chairman nor Vice-Chairman shall be present, then the members present shall choose some one of their number to be a Chairman of such meeting.
- (5.) In case of an equality of votes at any meeting the Chairman for the time being of such meeting shall have a second or casting vote.
- (6.) All Orders of the Board for payment of money, and all Precepts issued by the Board, shall be deemed to be duly executed if signed by 2 or more members of the Board authorised to sign them by a resolution of the Board, and countersigned by the Clerk ; but it shall not be necessary in any legal proceeding to prove that the members signing any such Order or Precept were authorised to sign them, and such authority shall be presumed until the contrary is proved.

SECOND SCHEDULE.

F O R M S .

Form of Mortgage.

Note.—See § 50 of Act.

Note.—Highway Rate includes Poor Rate, when the Highways are maintained out of Poor Rate. See § 38 of Act.

Note.—Highway Parish means every Parish that separately returns a Waywarden or Waywardens to the Highway Board. See § 3 of Act.

The Highway Board of the District, in consideration of pounds paid to the Treasurer of the said Board by A.B. of assigns unto the said A.B., his executors, administrators, and assigns, such proportion of the Highway Rates leviable in the Highway Parish or Parishes of [name the Parishes] as the said sum of pounds bears to the whole sum borrowed on the credit of the said Rates, to hold to the said A.B., his executors, administrators, and assigns, until the said sum of pounds, with interest at the rate of pounds per centum per annum, is paid.

The interest on this mortgage will be paid at on the day and days of in every year.

The principal will be paid at on the day of

Given under our Corporate seal this day of 18 .

Note.—The Mortgage must be under the Corporate Seal of the Board, and duly stamped. See "Commissioners Clauses Act," 10 Vict., c. 16, § 75.

Transfer of Mortgage by Indorsement.

The within-named A.B., in consideration of the sum of pounds paid to him by C.D. of hereby transfers to the said C.D., his executors, administrators, and assigns, all his interest in the monies secured by the within-written mortgage and in the within-named Rates.

In witness whereof the said A.B. has hereunto set his hand and seal this day of 18 .

Note.—The transfer must be under seal and duly stamped. See § 77 of "Commissioners Clauses Act," 10 Vict., c. 16.

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[28 & 29 VICT.]

Locomotives on Roads.

[C. 83.]

77.

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28 & 29 VICT., c. 83.

An Act for further regulating the use of Locomotives on Turnpike and other Roads for agricultural and other purposes.

Revised Statutes,
vol. xiv., p. 1189.

(5th July, 1865.)

WHEREAS by the "Locomotives Act, 1861," certain provision was made for regulating the use of Locomotives on Turnpike and other roads, and it is expedient that further and fuller provision should be made for that object: Be it therefore enacted, &c.

24 & 25 Vict., 70.

1. This Act shall not come into operation till the 1st day of September, 1865, which day is herein-after referred to as the commencement of the Act, and shall cease and determine on the 1st of September, 1867.

Commencement of Act.

2. After the commencement of this Act, and so long as the same shall continue in force, the 5th, 9th, 11th, and 15th Sections of the said recited Act, and all Orders made in pursuance of the said 5th Section, are hereby repealed.

Certain Sections of 24 & 25 Vict., 70, repealed.

3. Every Locomotive propelled by steam or any other than animal power on any Turnpike Road or public Highway shall be worked according to the following rules and regulations; *viz.*,
Firstly, at least 3 persons shall be employed to drive or conduct such Locomotive, and if more than 2 waggons or carriages be attached thereto, an additional person shall be employed, who shall take charge of such waggons or carriages:

Rules for working Locomotives on roads.

[The 2nd Sub-section is repealed by the "Highway Act, 1878," and other provisions substituted.]

Thirdly, the drivers of such Locomotives shall give as much space as possible for the passing of other traffic:

Fourthly, the whistle of such Locomotive shall not be sounded for any purpose whatever: nor shall the cylinder taps be opened within sight of any person riding, driving, leading or in charge of a horse upon the road; nor shall the steam be allowed to attain a pressure such as to exceed the limit fixed by the safety valve, so that no steam shall blow off when the Locomotive is upon the road:

Fifthly, every such Locomotive shall be instantly stopped on the person preceding the same, or any other person with a horse or carriage drawn by a horse, putting up his hand as a signal to require such Locomotive to be stopped:

Sixthly, any person in charge of any such Locomotive shall provide 2 efficient lights to be affixed conspicuously, one at each side on the front of the same, between the hours of one hour after sunset and one hour before sunrise;

In the event of a non-compliance with any of the provisions of this Section, the owner of the Locomotive shall, on summary conviction thereof before 2 Justices, be liable to a penalty not exceeding £10;

Penalty on non-compliance with rules.

But it shall be lawful for such owner on proving that he has incurred such penalty by reason of the negligence or wilful default of any person in charge of or in attendance on such Locomotive, to recover summarily from such person the whole or any part of the penalty he may have incurred as owner.

4. Subject and without prejudice to the regulations herein-after authorised to be made by Local Authorities, it shall not be lawful to drive any such Locomotive along any Turnpike Road or public Highway at a greater speed than 4 miles an hour, or through any city, town, or village at a greater speed than 2 miles an hour;

Speed of Locomotives on roads.

And any person acting contrary thereto shall for every such offence, on summary conviction thereof, forfeit any sum not exceeding £10.

[§ 5 is repealed by the "Highway Act, 1878."]

6. Any provision in any Act contained prohibiting, under penalty, the erection and use of any steam-engine, gin, or other like machine, or any machinery attached thereto within the distance of 25 yards from any part of any Turnpike Road, Highway, carriageway, or cartway, unless such steam-engine, gin, or other like engine or machinery be within some house or other building, or behind some wall, fence, or screen sufficient to conceal or screen the same from such Turnpike Road, Highway, carriageway, or cartway, shall not extend to prohibit the use of any Locomotive steam-engine for the purpose of ploughing within such distance of any such Turnpike Road, Highway, carriageway, or cartway, provided a person shall be stationed in the road, and employed to signal the driver when it shall be necessary to stop, and to assist horses, and carriages drawn by horses, passing the same, and provided the driver of the engine do stop in proper time.

Restrictions as to steam engines within 25 yards of roads not to apply to Locomotives ploughing.

7. The name and residence of the owner of every Locomotive shall be affixed thereto in a conspicuous manner.

Owner's name and residence to be affixed to Locomotives.

If it is not so affixed the owner shall, on summary conviction, be liable to a penalty not exceeding £2.

Book I.—HIGHWAYS AND BRIDGES.

78. [28 & 29 VICT.] *Locomotives on Roads.* [C. 83.]
A.D. 1865,

[§ 8 is repealed so far as regards England, by the "Highway Act, 1878," and other provisions substituted.]

[§§ 9—11 relate to Ireland and the Metropolis.]

Saving as to
Actions at Law.

12. Nothing in this Act contained shall authorise any person to use a Locomotive which may be so constructed or used as to be public nuisance at Common Law, and nothing herein contained shall affect the right of any person to recover damages in respect of any injury he may have sustained in consequence of the use of a Locomotive.

Short title.

13. This Act may be cited as "The Locomotives Act, 1865," and "The Locomotives Act, 1861," and this Act, shall be construed together as one Act.

A.D. 1865. [28 & 29 VICT.] *Turnpike Continuance.* [C. 107.]



28 & 29 VICT., c. 107.

Revised
Statutes,
vol. xiv., p. 1211.

An Act to continue certain Turnpike Acts in Great Britain. (5th July, 1865.)

Application of
Sections of the
"General Turn-
pike Act, 1822,"
to Turnpike
Roads becoming
ordinary High-
ways.

2. The Sections relating to encroachments on Turnpike Roads contained in the Act of the 3rd year of King George IV., c. 126, and numbered respectively 118 and 124, shall continue in force in relation to any road which, having been a Turnpike Road, may, at any time after the passing of this Act, become an ordinary Highway, in the same manner as if such road had continued to be a Turnpike Road;

And in the construction of the said Section the Highway Board shall be deemed to be the Trustees or Commissioners where the road is within the jurisdiction of a Highway Board, and in other cases the Surveyor or other Local Authority having the care of the road shall be deemed to be such Trustees or Commissioners.

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A.D. 1871. [34 & 35 VICT.] *Turnpike Continuance.* [C. 115.]



34 & 35 VICT., c. 115.

Law Reports
Statutes, vol. vi.,
p. 614.

An Act to continue certain Turnpike Acts in Great Britain, to repeal certain other Turn- pike Acts, and to make further provisions concerning Turnpike Roads.

(21st August, 1871.)

Contribution of
Highway Board
to the repair of
a Turnpike
Road to be
charged to the
District Fund.

15. When, in accordance with the provisions of the "Annual Turnpike Acts Continuance Act, 1863," an Order has been made on the Highway Board of a District to contribute to the repair of a Turnpike Road any moneys paid by the Board in pursuance of such Order shall be deemed to be expenses incurred for the common use or benefit of the several Parishes within such District, and shall be charged accordingly to the District Fund.

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[34 & 35 VICT.]

Turnpike Continuance.

[C. 115.]

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A.D. 1871.

So much of the said Act as prescribes that such moneys shall be deemed expenses incurred by the Board in respect of the repair of the Highways in the Parish in which the Turnpike Road is situated for which such contribution is required is hereby repealed.

16. Where, in accordance with the provisions of the "Annual Turnpike Acts Continuance Act, 1867," or the "Annual Turnpike Acts Continuance Act, 1868," the Trustees or Commissioners of a Turnpike Road which has become an ordinary Highway pay any of the moneys remaining in their hands on the expiration of their trust to the Treasurer of any Highway District in which such road is situated, such moneys shall be placed to the credit of the District Fund, for the common use or benefit of the several Parishes within such District.

So much of the said "Annual Turnpike Acts Continuance Act, 1867," as prescribes that such moneys, after having been paid to the Treasurer of a Highway District, shall be distributed amongst the Parishes within such District in proportion to the mileage of such road in each Parish, is hereby repealed.

17. The Trustees or Commissioners of a Turnpike Trust about to expire shall not sell any toll-house, or the site thereof, or any part of the site, or any part of any garden or land belonging thereto, without giving notice in writing not later than 2 months before the expiration of such Trust to the Highway Authority on which an Order might under the Provisions of the Act of the Session of the 4th and 5th years of the reign of Her present Majesty, chapter 59, or the "Annual Turnpike Acts Continuance Act, 1863," be made for contribution to the repair of such road where it adjoins the said premises; and such Authority, if of opinion that the road would be improved by the addition thereto of such premises or any part thereof, may, within one month of such notice, require the Trustees or Commissioners to make such improvement, and it shall be incumbent on such Trustees or Commissioners to give effect to such requisition.

Provided that if the Trustees or Commissioners feel aggrieved at such requisition they may appeal to the General or Quarter Sessions having jurisdiction in the place wherein such premises are situated at the next Court held not less than 15 days after the receipt of such requisition.

The appellants shall, within 7 days after receipt of such requisition, give a notice in writing to the Highway Authority of their intention to appeal.

The Court may adjourn the appeal, and at the hearing thereof may make such Order in the matter, and also such Order as to costs, to be paid by either party, as the Court thinks just.

No Order made in pursuance of this Section shall be quashed for want of form, or be removed by *Certiorari* or otherwise into any Superior Court.

Any sale or agreement for any sale made with a view to evade the provisions of this Section shall be void; provided that nothing herein contained shall invalidate any sale or contract for sale *bonâ fide* made before the passing of this Act.

Moneys paid from a Turnpike Trust on its expiration to the Treasurer of a Highway Board to go to District Fund for the common use of the District.

On the expiration of a Trust, Tollhouses, &c., to be sold without consent of Highway Authority.

[39 & 40 VICT.]

Commons.

[C. 56.]

A.D. 1876.



39 & 40 VICT., c. 56.

An Act for facilitating the regulation and improvement of Commons, and for amending the Acts relating to the Inclosure of Commons. (11th August, 1876.)

Law Reports
Statutes, vol. xi.

20. After the passing of this Act, where any Common is regulated pursuant to this Act by a Provisional Order of the Inclosure Commissioners confirmed by Parliament, or is the subject of a scheme confirmed by Parliament under the provisions of "The Metropolitan Commons Act, 1866," or "The Metropolitan Commons Amendment Act, 1869," or (being situate within the Metropolitan Police District) is the subject of any Private or Local Act of Parliament having for its object the preservation of such Common as an open space, no Surveyor of Highways or Highway Board constituted in pursuance of the "Highway Acts," or Trustees of any Turnpike Road, shall search for, dig, get, or carry away gravel, sand, stone, or other materials in or from any part of such Common which has not been set apart for that purpose with the sanction of Parliament, without the consent of the person or persons having the regulation or management of the same, or in default of such consent, without an Order of 2 or more Justices in Petty Sessions assembled, and acting in and for the Petty Sessional Division in which such Common is situate, who may in their Order prescribe such conditions as to mode of working and restitution of the surface as to them shall seem expedient.

Gravel-digging.

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A.D. 1876.

[39 & 40 VICT.]

Divided Parishes.

[C. 61.]



39 & 40 VICT., c. 61.

*Law Reports
Statutes, vol. xi,
p. 401.*

***An Act to provide for the better arrangement of
Divided Parishes and other local areas, and to
make sundry amendments in the Law relating
to the Relief of the Poor in England.***

(15th August, 1876.)

WHEREAS many Parishes in England are divided and some Unions are formed in a manner which renders their arrangements inconvenient, and whereas other Unions are too large in extent for the purposes of the relief of the Poor and other Local Administration, and it is expedient that provision should be made for remedying these inconveniences: And whereas other amendments are required in the laws for the relief of the Poor in England: Be it therefore enacted, &c,—

Local Govern-
ment Board
may make pro-
vision for
divided Parishes

1. Where any Parish shall be divided so as to have its parts or any of them isolated in some other Parish or Parishes or otherwise detached, the Local Government Board may, as and when they shall see fit, after local inquiry to be held upon notice duly given to the Clerk of the Peace of the County or Counties in which the parts of the Parish are situated and in the Parishes to be affected in the manner prescribed or usually adopted therein for the publication of parochial notices, make an Order, to take effect at the expiration of some period not less than 3 months from the day when a copy of such Order shall have been sent to the Overseers, either for constituting separate Parishes out of the divided Parish or for amalgamating some of the parts thereof with the Parish or Parishes in which the same may be locally included, or to which they may be annexed, as shall appear to such Board to be most convenient, and providing where requisite for a change of the County of the Parish or part of a Parish.

If one-tenth of
Ratepayers
object, Order to
be provisional.

2. If one-tenth in number and rateable value of the persons appearing on the Rate in force for the time being to be rated to the relief of the Poor in any Parish affected by such Order shall give notice to the Local Government Board in writing of objection to the same, within 3 months after copies of such Order shall have been sent to the Overseers of the Parishes affected thereby, the Order shall be deemed to be a Provisional Order only, and shall be dealt with accordingly.

State of
Parishes after
new Order.

3. From and after the 25th day of March next ensuing the day when such Order, if not objected to, shall take effect, and in the case of a Provisional Order next ensuing the date of the Act of Parliament confirming the same, the several parts of every Parish to which such Order shall apply shall be and continue to be constituted in the manner directed by the said Order, and the officers of the several Parishes affected thereby shall be empowered and shall be required to act as if such Parishes had been constituted in the manner directed prior to the issue of such Order.

* * * * *

Provision for
Highway Dis-
trict.

5. Where a Parish affected by the Order shall be included in a Highway District, its condition therein and the appointment of the Waywarden thereof shall be changed according to the terms of the Order, whether its area or contents be diminished or increased thereby.

* * * * *

Part I.—STATUTES.

[39 & 40 VICT.]

Exhausted Parish Lands,

[C. 62.]

81

A.D. 1876.



39 & 40 VICT., c. 62.

An Act to make provision for the disposal of certain lands appropriated for the supply of materials for the repair of public and private roads.
(15th August, 1876.)

*Law Reports
Statutes, vol. xi.
p. 411.*

WHEREAS it is expedient to provide for the disposal of certain lands herein described appropriated for the supply of materials to be used in the repair of the public and private roads in Parishes: Be it therefore enacted, &c.

1. Where land has been allotted to or otherwise acquired by a Parish, whether in the name of the Surveyor of Highways or other Trustees, or generally for the purpose of the supply of materials for the repair of the public roads and Highways in such Parish, and also for the repair of private roads therein, or for some other purpose, public or private, and the materials in such land shall be exhausted, or shall not be suitable or required, and the land shall not be available for such other purpose, if any, the same shall be dealt with as land which falls within the operation of the 3rd Section of the "Union and Parish Property Act, 1835," and the "Parish Property and Parish Debts Act, 1842," subject to the provisions herein-after contained.

Sale of exhausted gravel pits wherein there are private or other interests.

2. Before issuing their Order for the sale of the land, the Local Government Board shall hear and decide upon every objection and claim made in writing by any person claiming an interest therein, within 3 months from the passing of the resolution for the sale of the land, and shall either refuse to sanction the sale, or allow it to proceed, providing, if necessary, for the interest of every person establishing the same out of the purchase money.

Local Government Board to hear and decide on objections and claims.

3. If there be disputed claims to any interest in the said land, or if the person entitled to such interest be under legal disability, the Board shall direct that proceedings may be taken in the High Court of Justice, or, where the amount of the value in question shall not exceed £50, in the County Court, for the settlement of such dispute, or for the proper disposal of such amount where there is no such dispute.

Disputed claims and interests of disabled persons.

4. When the Board shall see fit they may order that the land shall be offered to the owner or owners, as the case may be, of the adjoining land, at a price to be settled in such manner as the Board shall deem most expedient, and if such owner or owners shall be willing to purchase the same at such price the same shall be sold to such owner or owners, and not otherwise;

Right of pre-emption by adjoining owner.

And the declaration of such owner or owners as to their willingness to purchase shall be given within a time to be appointed by the said Board.

5. Where any right to mines or minerals under the land is claimed by the Lord of the Manor or other person, the Board may, if they see fit, reserve the same in their Order for sale, or may order the sale subject to the right so claimed.

Mines how to be dealt with.

6. The said Board, in dealing with the interest of the Parish in the produce of the sale, shall cause such produce to be applied as far as practicable in the repair of the Highways in the Parish, or in some permanent improvement of the Highways, or in an investment, so that the annual dividends may be applicable in aid of the Highway Rate until the Board shall otherwise order;

Appropriation of the interest of the parish in the produce of the sale.

And the said Board shall have the like power of dealing with the produce of the sale of lands under the Highway Acts, if applied to by the Surveyor of Highways or any Authority exercising the powers of such Surveyor, where such produce cannot be conveniently appropriated in the manner provided by those Acts.

7. The word "Parish" shall include every township or other place separately maintaining its own Highways, except that where such township is not a Parish within the operation of the above-mentioned Acts of the years 1835 and 1842 respectively, the proceedings to be taken under them shall be restricted to such township or place;

Interpretation of the word "Parish."

Provided that the Churchwardens and Overseers, or the Overseers only, as the case may be, of the Parish, as defined in the "Poor Law Amendment Act of 1866," comprising such township or place shall discharge all the duties hereby rendered necessary for it in like manner as if it were co-extensive with such Parish.

8. This Act shall be termed "The Sale of Exhausted Parish Lands Act, 1876."

Short title.

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A.D. 1877.

[40 & 41 VICT.] *Law of Evidence Amendment.*

[C. 14.]



40 & 41 VICT., c. 14.

*Law Reports
Statutes, vol. xli.,
p. 138.*

*An Act for the Amendment of the Law of
Evidence in certain cases of Misdemeanor.*

28th June, 1877.

WHEREAS it is expedient further to amend the Law of Evidence : Be it therefore enacted,
&c.

Defendant, and
wife or husband
of defendant,
may be witness
in certain trials.

1. On the trial of any indictment or other proceeding for the non-repair of any public Highway or Bridge, or for a nuisance to any public Highway, River, or Bridge, and of any other indictment or proceeding instituted for the purpose of trying or enforcing a civil right only, every defendant to such indictment or proceeding, and the wife or husband of any such defendant, shall be admissible witnesses and compellable to give evidence.

A.D. 1878.

[41 & 42 VICT.] *South Wales Highway Amendment.*

[C. 34.]



41 & 42 VICT., c. 34.

ARRANGEMENT OF SECTIONS.

Section.

1. Act to be one with 23 & 24 Vict., c. 68.
2. Highway Boards may make improvements, and borrow money for the purpose.
3. Estimate of expense to be made, and notice to be given.
4. How notice to be given.
5. Moneys borrowed under Act to be a first charge on Highway Rates of Parishes liable to contribute.
6. County Roads Board may make orders as to application for consent.
7. Limitation as to amount to be levied not to apply to money borrowed under this Act.
8. What works are to be deemed improvements of Highways.
9. County Roads Board may order roads to be repaired out of Highway Rate.
10. Incorporation of certain clauses of 10 & 11 Vict., c. 16.
11. Highway Boards may purchase lands by agreement.
12. Definition of "parish."

*Law Reports
Statutes, vol.
xiii.*

*An Act to amend the Law relating to Highways
in South Wales.*
(22nd July, 1878.)

23 & 24 Vict., 68.

WHEREAS it is expedient to amend an Act passed in the 23rd and 24th years of the reign of Her present Majesty, intituled "An Act for the better management and control of the Highways in South Wales," which Act is in this Act called the "South Wales Highway Act:" Be it enacted, &c.

Act to be one
with 23 & 24
Vict., 68.

1. This Act shall be cited as the "South Wales Highway Act Amendment Act, 1878," and, so far as is consistent with the tenor thereof, shall be construed as one with the "South Wales Highway Act."

Highway
Boards may bor-
row money for
improvements.

2. The Highway Board for each District may make such improvements as are herein mentioned in the Highways within their jurisdiction, and may, with the approval of the County Roads Board of the County in which they are situate, borrow money for the purpose of defraying the expenses of such improvements.

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[41 & 42 VICT.] *South Wales Highway Amendment.*

[C. 34.]

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3. Previously to applying for the approval of the said County Roads Board, the Highway Board shall cause an estimate of the expense of the improvements to be made, and one month at the least before making their application shall give notice of their intention to do so.

Estimate to be made, and notice given.

Such notice shall state the following particulars :

- 1st. The nature of the work, the estimated amount of expense thereof, and the sum proposed to be borrowed :
 - 2nd. The Parish or Parishes within the Highway District by which the sum borrowed and interest thereon is to be paid, and in case of more than one being made liable to pay the principal and interest, the annual amounts to be contributed by each Parish towards the payment thereof :
 - 3rd. The number of years within which the principal moneys borrowed are to be paid off, not exceeding 20 years, and the amount to be set apart in each year in paying off the same :
 - 4th. The date of the meeting of the County Roads Board at which the application for such approval as aforesaid is to be made.
4. Such notice shall be given as follows :
1. By transmitting a copy to the Clerk of such County Roads Board :
 2. By placing a copy of such notice for 2 successive Sundays on the door of every Church and Chapel of the Parish or Parishes on behalf of which such works are to be done, or, in the case of a Parish not having a Church or Chapel, on some conspicuous position in such Parish.

How notice to be given.

Upon the hearing of the application, any person or persons may oppose the approval of the County Roads Board being given, and it shall be lawful for the County Roads Board to give or withhold their approval, with or without modification, as they think just.

5. All moneys borrowed in pursuance of this Act, together with the interest thereon, shall be a first charge on the Highway Rates of each Parish liable to contribute to the payment thereof, in the same manner, as far as the creditor is concerned, as if the money had been borrowed on account of each Parish alone, and the sums necessary to repay the said borrowed moneys, with interest, shall in each said Parish be recoverable in the same manner as if they were expenses incurred by the Board in keeping in repair the Highways of that Parish.

Moneys borrowed to be a first charge on Highway Rates of Parishes liable.

But it shall be the duty of the Highway Board in case of any one Parish paying more than its share of such borrowed money, or of the interest thereof, to make good to the Parish the excess so paid out of the Rates of the other Parishes liable to contribute thereto.

6. The County Roads Board may from time to time make general Orders relative to the mode in which applications are to be made to them for their consent under this Act to the borrowing of any moneys.

County Roads Board may make Orders as to applications.

7. The limitation as to the amount in the pound of the rateable value of the property to be levied in any one year imposed by Section 24 of the "South Wales Highway Act" shall not apply to the amount of principal and interest of money borrowed under this Act and liable to be repaid in any year.

Limitation of principal Act not to apply to this Act.

8. The following works shall be deemed to be improvements of Highways :

What works are to be deemed improvements of Highways.

- 1st. The conversion of any road that has not been stoned into a stoned road :
- 2nd. The widening of any road, the cutting the corners off on any road, the levelling roads, the making of a new road, the building or enlarging of bridges, and the purchase of land for any of the purposes aforesaid :
- 3rd. The doing any other work in respect of Highways beyond ordinary repairs essential to placing any existing Highway in a proper state of repair.

9. It shall be lawful for any County Roads Board at any one of their regular meetings to make an Order declaring that any Highway within the County for which they act, being a main thoroughfare through any one or more Highway Districts to any town or towns or to any Railway station or stations, shall be a District Road, and from and after a day to be named in the Order the cost of maintaining such District Road shall be a common charge upon the Highway District or Districts within which such road is locally situate, and shall be borne by the several Parishes within such District or Districts in manner following ; (that is to say.)

County Roads Board may order roads to be repaired out of Highway Rate.

- (1.) Where the District Road is wholly situate in one Highway District, the cost of repairing the same shall be paid out of the moneys levied for the repair and maintenance of the Highways, and shall be apportioned amongst and charged upon the several Parishes within the District in the same manner as the salaries of the Clerk and Treasurer of the District ; and
- (2.) Where the District Road is situate in more than one Highway District, the cost of repairing the part within any such District shall in like manner be paid and be apportioned amongst and charged upon the several parishes constituting the District within which such part is situate.

Provided always, that such County Roads Board shall, previous to making an Order that any Highway shall be repaired as aforesaid, give notice of their intention to proceed to make an Order to that effect at a meeting of the Board to be named in such notice, and shall advertise such notice in one or more of the newspapers circulating in the County, and shall cause Copies of such notice to be affixed to the door of each Parish Church in the said Highway District or Districts, and shall cause to be served a Copy of such notice on the Clerk of such Highway District or Districts in which such Highway or Highways are situate, at least one month before the day of the meeting so named in such notice, and shall at such meeting, previous to coming to any determination, hear any person or persons who shall desire to make any objections to the proposed Order being made, and shall, after such objections, if any, have been heard, proceed to make, modify, or reject such proposed Order as to them shall seem just and reasonable.

10. The Clauses of the "Commissioners Clauses Act, 1847," with respect to mortgages to be created by the Commissioners, shall form part of and be incorporated with this Act, and any

Incorporation of certain clauses of 10 & 11 Vict., 16.

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[41 & 42 VICT.] *South Wales Highway Amendment.*

[C. 34.]

mortgagee or assignee may enforce payment of his principal and interest by appointment of a receiver.

In the construction of the said Clauses "the Commissioners" shall mean "the Highway Board." Mortgages and transfers of mortgages shall be valid if made in the forms prescribed by the last-mentioned Act, or as near thereto as circumstances admit.

Highway
Boards may
purchase lands
by agreement.
8 Vict., 18.

11. A Highway Board, for the purpose of improving the Highways within their district, may purchase such lands or easements relating to lands as they may require; and the "Lands Clauses Consolidation Act, 1845," and any Act amending the same, except the Clauses in the said Acts respectively relating to the purchase of lands otherwise than by agreement, shall be incorporated with this Act; and for the purposes of those Acts this Act shall be deemed the special Act, and any such Highway Board as aforesaid exercising the powers of this Act shall be deemed the promoters of the undertaking.

Definition of
"Parish."

12. "Parish" in this Act means every Parish or place for which a separate Rate is made for the maintenance of the Highways.

A.D. 1878.

[41 & 42 VICT.] *Highways and Locomotives.*

[C. 77.]



41 & 42 VICT., c. 77.

ARRANGEMENT OF SECTIONS.

Preliminary.

Section.

1. Short title.
2. Application of Act.

PART I.

AMENDMENT OF HIGHWAY LAW.

Highway Districts.

3. Highway Districts to be made so far as possible coincident with Rural Sanitary Districts.
4. Power for Rural Sanitary Authority of District coincident with Highway District to become Highway Board.
5. Consequences of Rural Sanitary Authority becoming Highway Board.
6. Highway Boards may combine to appoint a District Surveyor.
7. Expenses of Highway Boards to be paid out of District Fund.
8. Charge of moneys to be hereafter borrowed.
9. Audit of accounts of Highway Districts and Parishes.
10. Power of County Authority to enforce performance of duty by defaulting Highway Authority.
11. Duration of office of Waywarden.
12. Repeal of part of Section 7 of "Highway Act, 1862."

Main Roads.

13. Disturnpiked Roads to become main roads, and half the expense of maintenance to be contributed out of County Rate.
14. Description of Highway areas.
15. Power to declare ordinary Highway to be a main road.
16. Power to reduce main road to status of ordinary Highway.
17. Turnpike road in several Counties.
18. Accounts of expenses of maintenance of main roads.
19. Highway District situate in more than one County.
20. Repair of main roads in certain cases.

Bridges.

21. Certain existing Bridges may be accepted by County Authority.
22. Contribution out of County Rates towards erecting Bridges.

Extraordinary Traffic.

23. Power of Road Authority to recover expenses of extraordinary traffic.

Discontinuance of unnecessary Highways.

24. Unnecessary Highways may be declared not repairable at the public expense.

Appointment of Surveyors in certain Parishes.

25. Removal of doubt as to appointment of Surveyors in certain Parishes.

Part I.—STATUTES.

[41 & 42 VICT.] *Highways and Locomotives.*

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Bye-laws by County Authority.

26. Power of County Authority to make Bye-laws.

Saving for Minerals.

27. To whom minerals under disturnpiked roads to belong.

PART II.

AMENDMENT OF LOCOMOTIVE ACTS, 1861 AND 1865.

28. Weight of Locomotives and construction of wheels.

29. Amendment of Section 3 of "Locomotive Act, 1865."

30. Steam Locomotives to be constructed so as to consume their smoke.

31. Power to Local Authorities to make Orders as to hours during which Locomotives may pass over roads.

32. Power of County Authority to license Locomotives.

33. Duration of Part II. of Act.

PART III.

Procedure and Definitions.

34. Confirmation of Provisional Order.

35. Confirmation of Bye-laws.

36. Recovery of penalties and expenses.

37. Form of appeal to Quarter Sessions.

38. Interpretation.

An Act to amend the Law relating to Highways in England and the Acts relating to Locomotives on Roads; and for other purposes.

*Law Reports
Statutes,
vol. xiii.*

(16th August, 1878.)

WHEREAS it is expedient to amend the Law relating to Highways in England, and to amend the "Locomotive Acts, 1861 and 1865": Be it enacted, &c.

24 & 25 Vict., 70.
28 & 29 Vict., 83.

Preliminary.

1. This Act may be cited as the "Highways and Locomotives (Amendment) Act, 1878."

2. This Act shall not apply to Scotland or Ireland; and, save as is by this Act expressly provided, Part I. of this Act shall not apply to the Isle of Wight; nor to any part of the Metropolis; nor to any part of a county to which the Act passed in the Session of the 23rd and 24th years of the reign of Her present Majesty, chapter 68, intituled "An Act for the better management and control of the Highways in South Wales," extends.

Short title.

Application of Act.

PART I.

AMENDMENT OF HIGHWAY LAW.

Highway Districts.

3. In forming any Highway Districts, or in altering the boundaries of any Highway Districts, the County Authority shall have regard to the boundaries of the Rural Sanitary Districts in their County, and shall, so far as may be found practicable, form Highway Districts so as to be coincident in area with Rural Sanitary Districts, or wholly contained within Rural Sanitary Districts.

Highway Districts to be made so far as possible coincident with Rural Sanitary Districts.

4. Where a Highway District, whether formed before or after the passing of this Act, is or becomes coincident in area with a Rural Sanitary District, the Rural Sanitary Authority of such District may apply to the County Authority, stating that they are desirous to exercise the powers of a Highway Board under the "Highway Acts" within their District.

Power for Rural Sanitary Authority of District coincident with Highway District to become Highway Board.

On such application the County Authority may, if they see fit, by Order declare that from and after a day to be named in the Order (in this Act called the commencement of the Order) such Rural Sanitary Authority shall exercise all the powers of a Highway Board under the Highway Acts; and as from the commencement of the Order the existing Highway Board (if any) for the District shall be dissolved, and Waywardens or Surveyors shall not hold office or be elected for any Parish in the District.

An Order made under this Section may be amended, altered, or rescinded by a subsequent Order of the County Authority.

Where a Highway District, being coincident in area with a Rural Sanitary District, is situate in more than one County, an Order under this Section may be made by the County Authority of any County in which any part of such District is situate, but such Order, and any Order amending, altering, or rescinding the same, shall not be of any force or effect until it has been approved by the County Authority or Authorities of the other County or Counties in which any part of such District is situate.

5. (1.) From and after the commencement of the Order declaring a Rural Sanitary Authority entitled to exercise the powers of a Highway Board within their District, the following consequences shall ensue:

Consequences of Rural Sanitary Authority becoming Highway Board.

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All such property, real or personal, including all interests, easements, and rights in to and out of property real and personal and including things in action, as belongs to or is vested in or would but for such Order have belonged to or been vested in the Highway Board, or any Surveyor or Surveyors of any Parish forming part of the District, shall pass to and vest in the Rural Sanitary Authority for all the estate and interest of the Highway Board, or of such Surveyor or Surveyors, but subject to all debts and liabilities affecting the same:

All debts and liabilities incurred in respect of any property transferred to the Rural Sanitary Authority may be enforced against that Authority to the extent of the property transferred:

All such powers, rights, duties, liabilities, capacities and incapacities (except the power of obtaining payment of their expenses by the issue of precepts in manner provided by the "Highway Acts," or the power of making, assessing, and levying Highway Rates) as are vested in or attached to or would but for such Order have become vested in or attached to the Highway Board, or any Surveyor or Surveyors of any Parish forming part of the District, shall vest in and attach to the Rural Sanitary Authority:

All property by this Act transferred to the Rural Sanitary Authority shall be held by them on trust for the several Parishes for the benefit of which it was held previously to such transfer.

(2.) If at any time after a Rural Sanitary Authority has become invested with the powers of a Highway Board in pursuance of this Act, the boundaries of the District of such Authority are altered, the powers and jurisdiction of such Authority in their capacity of Highway Board shall be exercised within such altered district; and on the application of any Authority or person interested the Local Government Board may by Order provide for the adjustment of any accounts, or the settlement of any doubt or difference so far as relates to Highways consequent on the alteration of the boundaries of such Rural Sanitary District.

(3.) All expenses incurred by a Rural Sanitary Authority in the performance of their duties as a Highway Board shall be deemed to be general expenses of such Authority within the meaning of the "Public Health Act, 1875."

6. Any 2 or more Highway Boards may unite in appointing and paying the salary of a District Surveyor, who shall in relation to the District of each of the Boards by whom he is appointed have all the powers and duties of a District Surveyor under the "Highway Acts."

7. All expenses incurred by any Highway Board in maintaining and keeping in repair the Highways of each Parish within their District, and all other expenses legally incurred by such Board, shall, notwithstanding anything contained in the "Highway Acts," on and after the 25th day of March, 1879, be deemed to have been incurred for the common use or benefit of the several Parishes within their District, and shall be charged on the District Fund:

Provided, that if a Highway Board think it just, by reason of natural differences of soil or locality, or other exceptional circumstances, that any Parish or Parishes within their District should bear the expenses of maintaining its or their own Highways, they may (with the approval of the County Authority or Authorities of the County or Counties within which their District, or any part thereof, is situate) divide their District into 2 or more parts, and charge exclusively on each of such parts the expenses payable by such Highway Board in respect of maintaining and keeping in repair the Highways situate in each such part; so, nevertheless, that each such part shall consist of one or more Highway Parish or Highway Parishes.

8. All moneys borrowed by a Highway Board after the 25th day of March, 1879, under the Highway Act, shall be charged on the District Fund, but nothing in this Act shall affect the security, chargeability, or repayment of any moneys borrowed before the 25th day of March, 1879.

9. The accounts of the Highway Authority of every Highway District and Highway Parish shall be made up in such form as the Local Government Board shall from time to time prescribe, and shall be balanced to the 25th day of March in each year, and as soon as conveniently may be after such day the said accounts shall be audited and examined by the auditor of accounts relating to the Relief of the Poor for the audit District in which the Highway District or Highway Parish, or the greater part thereof in rateable value, is situate.

Every such auditor shall (as nearly as may be) have, in relation to the accounts of the Highway Authority of a Highway District or Highway Parish, and of their officers, the same powers and duties as he has in the case of accounts relating to the Relief of the Poor; and any person aggrieved by the decision of the auditor shall have the same rights and remedies as in the case of such last-mentioned audit.

The auditor shall receive such remuneration as the Local Government Board direct; and such remuneration, together with the expenses incident to the audit, shall be paid by the Highway Authority of the Highway District or Highway Parish out of the fund or Rate applicable to the repair of Highways within such District or Parish; and such remuneration and expenses may, in default of payment, be recovered in a summary manner.

Section 44 of the "Highway Act, 1835," is hereby repealed, and Section 36 of the "Highway Act, 1864," is hereby repealed down to the words "to be paid out of the District Fund," and the statement of receipt and expenditure by the said Section directed to be furnished by every Highway Board within 30 days after the signature of the accounts by the Chairman shall be furnished within 30 days after the completion of the audit under this Section.

Nothing in this Section shall affect any proceeding commenced before the passing of this Act.

10. Where complaint is made to the County Authority that the Highway Authority of any Highway area within their jurisdiction has made default in maintaining or repairing all or any of the Highways within their jurisdiction, the County Authority, if satisfied after due inquiry and report by their Surveyor that the Authority has been guilty of the alleged default, shall make an Order limiting a time for the performance of the duty of the Highway Authority in the matter of such complaint.

28 & 29 Vict., 55.

Highway Boards may combine to appoint a District Surveyor.

Expenses of Highway Boards to be paid out of District fund.

Charge of moneys to be hereafter borrowed.

Audit of accounts of Highway Districts and Parishes.

5 & 6 WILL. IV., 50.
27 & 28 Vict., 101.

Power of County Authority to enforce performance of duty by defaulting Highway Authority.

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[41 & 42 VICT.] *Highways and Locomotives.*

[C. 77.]

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If such duty is not performed by the time limited in the Order, and the Highway Authority fail to show to the County Authority sufficient cause why the Order has not been complied with, the County Authority may appoint some person to perform such duty, and shall by Order direct that the expenses of performing the same, together with the reasonable remuneration of the person appointed for superintending such performance, shall be paid by the Authority in default, and any Order made for payment of such expenses and costs may be removed into the High Court of Justice, and be enforced in the same manner as if the same were an Order of such Court.

Any person appointed under this Section to perform the duty of a defaulting Highway Authority shall, in the performance and for the purpose of such duty, be invested with all the powers of such Authority other than the powers of making Rates or levying contributions by precept, and the County Authority may from time to time, by Order, change any person so appointed.

Where an Order has been made by a County Authority for the repair of a Highway on a Highway Authority alleged to be in default, if such Authority, within 10 days after service on them of the Order of the County Authority, give notice to the Clerk of the Peace that they decline to comply with the requisitions of such Order until their liability to repair the Highway in respect to which they are alleged to have made default has been determined by a Jury, it shall be the duty of the County Authority either to satisfy the defaulting Authority by cancelling or modifying in such manner as the Authority may desire the Order of the County Authority, or else to submit to a Jury the question of the liability of the defaulting Authority to repair the Highway.

If the County Authority decide to submit the question to a Jury they shall direct a Bill of Indictment to be preferred to the next practicable Assizes to be holden in and for their County, with a view to try the liability of the defaulting Authority to repair the Highway. Until the trial of the Indictment is concluded the Order of the County Authority shall be suspended. On the conclusion of the trial, if the Jury find the defendants guilty, the Order of the County Authority shall forthwith be deemed to come into force; but if the Jury acquit the defendants the Order of the County Authority shall forthwith become void.

The costs of the indictment, and of the proceedings consequent thereon, shall be paid by such parties to the proceedings as the Court before whom the case is tried may direct. Any costs directed to be paid by the County Authority shall be deemed to be expenses properly incurred by such Authority, and shall be paid accordingly out of the County Rate; and any costs directed to be paid by the Highway Authority shall be deemed to be expenses properly incurred by such Authority in maintenance of the roads within their jurisdiction, and shall be paid out of the funds applicable to the maintenance of such roads.

11. Notwithstanding anything in the "Highway Acts," Waywardens shall continue in office till the 30th day of April in the year following the year in which they were elected, and on that day their successors shall come into office.

Duration of office of Waywarden.

12. So much of Section 7 of the "Highway Act, 1862," as prohibits the inclusion in a Highway District of any Pariah or place the Highways of which were, at the time of the passing of that Act, or within 6 months afterwards, under the superintendence of a Board established in pursuance of Section 18 of the principal Act, unless with the consent of such Board, is hereby repealed.

Repeal of part of § 7 of 35 & 36 Vict., 61.

Main Roads.

13. For the purposes of this Act, and subject to its provisions, any road which has, within the period between the 31st day of December, 1870, and the date of the passing of this Act, ceased to be a Turnpike Road, and any road which, being at the time of the passing of this Act a Turnpike Road, may afterwards cease to be such, shall be deemed to be a main road: and one half of the expenses incurred from and after the 29th day of September, 1878, by the Highway Authority in the maintenance of such road shall, as to every part thereof which is within the limits of any Highway area, be paid to the Highway Authority of such area by the County Authority of the County in which such road is situate out of the County Rate, on the certificate of the Surveyor of the County Authority, or of such other person or persons as the County Authority may appoint, to the effect that such main road has been maintained to his or their satisfaction.

Disturnpiked roads to become main roads, and half the expense of maintenance to be contributed out of County Rate.

Provided that no part of such expenses shall be included in—

- (1.) Any precept or warrant for the levying or collection of County Rate within the Metropolis, subject and without prejudice to any provision to be hereafter made; or
- (2.) Any Order made on the Council of any Borough having a separate Court of Quarter Sessions under Section 117 of the "Municipal Corporation Act, 1835."

The term "expenses" in this Section shall mean the cost of repairs defrayed out of current Rates, and shall not include any repayment of principal moneys borrowed, or of interest payable thereon.

14. The following areas shall be deemed to be Highway areas for the purposes of this Act; (that is to say,)

Description of Highway areas.

- (1.) Urban Sanitary Districts:
- (2.) Highway Districts:
- (3.) Highway Parishes not included within any Highway District or any Urban Sanitary District.

15. Where it appears to any Highway Authority that any Highway within their District ought to become a main road by reason of its being a medium of communication between great towns, or a thoroughfare to a railway station, or otherwise, such Highway Authority may apply to the County Authority for an Order declaring such road, as to such parts as aforesaid, to be a main road; and the County Authority, if of opinion that there is probable cause for the application, shall cause the road to be inspected, and, if satisfied that it ought to be a main road, shall make an Order accordingly.

Power to declare ordinary Highway to be a main road.

A copy of the Order so made shall be forthwith deposited at the office of the Clerk of the Peace of the County, and shall be open to the inspection of persons interested at all reasonable hours;

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Power to reduce
main road to
status of ordi-
nary Highway.

and the Order so made shall not be of any validity unless and until it is confirmed by a further Order of the County Authority made within a period of not more than 6 months after the making of the first-mentioned Order.

16. If it appears to a County Authority that any road within their County which, within the period between the 31st day of December, 1870, and the date of the passing of this Act, ceased to be a Turnpike Road ought not to become a main road in pursuance of this Act, such Authority shall, before the 1st day of February, 1879, make an application to the Local Government Board for a Provisional Order declaring that such road ought not to become a main road.

Subject as aforesaid, where it appears to a County Authority that any road within their County which has become a main road in pursuance of this Act ought to cease to be a main road and become an ordinary Highway, such Authority may apply to the Local Government Board for a Provisional Order declaring that such road has ceased to be a main road and become an ordinary Highway.

The Local Government Board, if of opinion that there is probable cause for an application under this Section, shall cause the road to be inspected, and if satisfied that it ought not to become or ought to cease to be a main road and become an ordinary Highway shall make a Provisional Order accordingly, to be confirmed as herein-after mentioned.

All expenses incurred in or incidental to the making or confirmation of any Order under this Section shall be defrayed by the County Authority applying for such Order.

Turnpike Road
in several
Counties.

17. Where a Turnpike Road subject to one Trust extends into divers Counties, such road, for the purposes of this Act, shall be treated as a separate Turnpike Road in each County through which it passes.

Accounts of ex-
penses of main-
tenance of main
roads.

18. Every Highway Authority shall keep, in such form as may be directed by the County Authority, a separate account of the expenses of the maintenance of the main roads within their jurisdiction, and shall forward copies thereof to the County Authority at such time or times in every year as may be required by the County Authority, and the accounts so kept shall, where the accounts of the Highway Authority are audited under this Act or under Section 247 of the "Public Health Act, 1875," be audited in the same manner as the other accounts of such Authority, and where the accounts of the Highway Authority are not so audited shall be subject to such audit as the County Authority may direct.

88 & 89 Vict., 55.

If any Highway Authority makes default in complying with the provisions of this Section, or with any directions given in pursuance thereof by the County Authority, the County Authority may withhold all or any part of the contribution payable by them under this Act towards the expenses of the maintenance of main roads by such Highway Authority for the year in which such default occurs.

Highway Dis-
trict situate in
more than one
County.

19. Where a Highway District is situate in more than one County, the provisions of this Act with respect to the expenses of the maintenance of main roads, shall apply as if the portion of such District situate in each County were a separate Highway District in that County.

Repair of main
roads in certain
cases.

20. Notwithstanding the provisions of this Act, in the case of any County in which certain of the Bridges within the County are repairable by the County at large, and others are repairable by the several Hundreds within the County in which they are situate, it shall be lawful for the County Authority from time to time, by Order, to declare any main road or part of a main road within their County to be repairable to the extent only and in manner provided by Section 13 of this Act, either by the County or by the Hundred in which such main road or part is situate, as they think fit; and where a main road or part thereof is declared to be repairable by a Hundred, the expense of repairing the same shall, to the extent to which but for this Section the expense or any contribution towards the expense of repairing the same would be repayable out of the County Rate, be repayable out of a separate Rate which shall be raised and charged in the like manner as the expenses of repairing the Hundred Bridges in the same Hundred would have been raised and charged.

Bridges.

Certain existing
Bridges may
be accepted by
County Autho-
rity.

21. Any Bridge erected before the passing of this Act in any County without such superintendence as is provided in Section 5 of the Statute of the 43rd year of King George III., chapter 59, and which is certified by the County Surveyor or other person appointed in that behalf by the County Authority to be in good repair and condition, shall, if the County Authority see fit so to order, become and be deemed to be a Bridge which the inhabitants of the County shall be liable to maintain and repair.

Contributions
out of County
Rates towards
erecting
Bridges.

22. The County Authority may make such contribution as it sees fit out of the County Rates towards the cost of any Bridge to be hereafter erected, after the same has been certified in accordance with the provisions of Section 5 of the Statute of the 43rd year of King George III., chapter 59, as a proper Bridge to be maintained by the inhabitants of the County; so always that such contribution shall not exceed one-half the cost of erecting such Bridge.

Extraordinary Traffic.

Power of Road
Authority to re-
cover expenses
of extraordi-
nary traffic.

23. Where by a certificate of their Surveyor it appears to the Authority which is liable or has undertaken to repair any Highway, whether a main road or not, that, having regard to the average expense of repairing Highways in the neighbourhood, extraordinary expenses have been incurred by such Authority in repairing such Highway by reason of the damage caused by excessive weight passing along the same, or extraordinary traffic thereon, such Authority may recover in a summary manner from any person by whose order such weight or traffic has been conducted the amount of such expenses as may be proved to the satisfaction of the Court having cognizance of the case to have been incurred by such Authority by reason of the damage arising from such weight or traffic as aforesaid.

Provided that any person against whom expenses are or may be recoverable under this Section may enter into an agreement with such Authority as is mentioned in this Section for the payment

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to them of a composition in respect of such weight or traffic, and thereupon the persons so paying the same shall not be subject to any proceedings under this Section.

Discontinuance of unnecessary Highways.

24. If any Authority liable to keep any Highway in repair is of opinion that so much of such Highway as lies within any Parish situate in a Petty Sessional Division is unnecessary for public use, and therefore ought not to be maintained at the public expense, such Authority (in this Section referred to "as the applicant Authority") may apply to the Court of Summary Jurisdiction of such Petty Sessional Division to view by 2 or more Justices, being members of the Court, the Highway to which such application relates, and on such view being had, if the Court of Summary Jurisdiction is of opinion that the application ought to be proceeded with, it shall by notice in writing to the owners or reputed owners and occupiers of all lands abutting upon such Highway, and by public notice, appoint a time and place, not earlier than one month from the date of such notice, at which it will be prepared to hear all persons objecting to such Highway being declared unnecessary for public use, and not repairable at the expense of the public.

Unnecessary Highways may be declared not repairable at the public expense.

On the day and at the place appointed, the Court shall hear any persons objecting to an Order being made by the Court that such Highway is unnecessary for public use and ought not to be repairable at the public expense, and shall make an Order either dismissing the application or declaring such Highway unnecessary for public use, and that it ought not to be repaired at the public expense.

If the Court make such last-mentioned Order as aforesaid, the expenses of repairing such Highway shall cease to be defrayed out of any public Rate.

Public notice of the time and place appointed for hearing a case under this Section shall be given by the applicant Authority as follows; that is to say,

- (1.) By advertising a notice of the time and place appointed for the hearing and the object of the hearing, with a description of the Highway to which it refers in some local newspaper circulating in the District in which such Highway is situate once at least in each of the 4 weeks preceding the hearing; and
- (2.) By causing a copy of such notice to be affixed, at least 14 days before the hearing, to the principal doors of every Church and Chapel in the Parish in which such Highway is situate, or in some conspicuous position near such Highway.

And the application shall not be entertained by the Court until the fact of such public notice having been given is proved to its satisfaction.

If at any time after an Order has been made by a Court of Summary Jurisdiction under this Section, upon application of any person interested in the maintenance of the Highway in respect of which such Order has been made, after one month's previous notice in writing thereof to the applicant Authority, it appears to the Court of Quarter Sessions that from any change of circumstances since the time of the making of any such Order as aforesaid such Highway has become of public use, and ought to be maintained at the public expense, the Court of Quarter Sessions may direct that the liability of such Highway to be maintained at the public expense shall revive from and after such day as they may name in their Order, and such Highway shall thenceforth be maintained out of the Rate applicable to payment of the expenses of repairing other Highways repairable by the applicant Authority; and the said Court of Quarter Sessions may by their Order direct the expenses of and incident to such application to be paid as they may see fit.

Any Order of a Court of Summary Jurisdiction under this Section shall be deemed to be an Order from which an appeal lies to a Court of Quarter Sessions.

Appointment of Surveyors in certain Parishes.

25. Whereas doubts have arisen whether a Surveyor of Highways can be appointed, in pursuance of the "Highway Act, 1835," for a Parish which does not maintain any Highway: Be it therefore enacted, that it shall be lawful for the inhabitants in Vestry assembled of any Parish or place having a known legal boundary (notwithstanding that the inhabitants at large are not for the time being liable to maintain any Highway or to contribute to any Rate applicable to the maintenance of Highways), or, on the neglect or refusal of such inhabitants, for the Justices at a special Sessions for the Highways or in Petty Sessions assembled, at any time to exercise all the powers of the "Highway Acts" with respect to the election or appointment of a Surveyor of Highways with or without a salary for such Parish or place; and any Surveyor so elected or appointed shall have all the powers and duties (including the power of making, assessing, and levying of Highway Rates) of a Surveyor under the "Highway Acts."

Removal of doubt as to appointment of Surveyors in certain Parishes s & c Will. IV., 50.

Bye-laws by County Authority.

26. A County Authority may from time to time make, with respect to all or any main roads or other Highways within any Highway area in their County, and when made alter or repeal, Bye-laws for all or any of the purposes following; that is to say,

Power of County Authority to make bye-laws.

- (1.) For prohibiting or regulating the use of any waggon, wain, cart or carriage drawn by animal power and having wheels of which the felloes or tires are not of such width in proportion to the weight carried by, or to the size of, or to the number of wheels of such waggon, wain, cart or carriage, as may be specified in such Bye-laws; and
- (2.) For prohibiting or regulating the use of any waggon, wain, cart or other carriage drawn by animal power not having the nails on its wheels countersunk in such manner as may be specified in such Bye-laws, or having on its wheels bars or other projections forbidden by such Bye-laws; and
- (3.) For prohibiting or regulating the locking of the wheel of any waggon, wain, cart or carriage drawn by animal power when descending a hill, unless there is placed at the bottom of such wheel during the whole time of its being locked a skidpan alipper or shoe in such manner as to prevent the road from being destroyed or injured by the locking of such wheel; and

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- (4.) For prohibiting or regulating the erection of gates across Highways, and prohibiting gates opening outwards on Highways; and
- (5.) For regulating the use of bicycles.
- Fines to be recovered summarily may be imposed by any such Bye-laws on persons breaking any Bye-law made under this Section, provided that no fine exceeds for any one offence the sum of £2, and that the Bye-laws are so framed as to allow of the recovery of any sum less than the full amount of the fine.

Saving for Minerals.

To whom minerals under dis-
turnpiked roads
to belong.

11 & 12 Vict., 63.

38 & 39 Vict., 55.

27. Notwithstanding anything contained in Section 68 of the "Public Health Act, 1848," or in Section 149 of the "Public Health Act, 1875," all mines and minerals of any description whatsoever under any dis-
turnpiked road or Highway which has or shall become vested in an Urban Sanitary Authority by virtue of the said Sections, or either of them, shall belong to the person who would be entitled thereto in case such road or Highway had not become so vested, and the person entitled to any such mine or minerals shall have the same powers of working and of getting the same or other minerals as if the road or Highway had not become vested in the Urban Sanitary Authority, but so nevertheless that in such working and getting no damage shall be done to the road or Highway.

This Section shall extend to the Isle of Wight and to South Wales, as defined by the said Act of the 23rd and 24th years of the reign of Her present Majesty, chapter 68, intituled "An Act for the better management and control of the Highways in South Wales."

PART II.

AMENDMENT OF LOCOMOTIVE ACTS, 1861 AND 1865.

Weight of loco-
motives and
construction of
wheels.

24 & 25 Vict., 70.

28 & 29 Vict., 83.

28. Section 3 of the "Locomotive Act, 1861," and Section 5 of the "Locomotive Act, 1865," are hereby repealed, so far as relates to England, and in lieu thereof be it enacted that it shall not be lawful to use on any Turnpike Road or Highway a Locomotive constructed otherwise than in accordance with the following provisions: (that is to say,)

- (1.) A Locomotive not drawing any carriage, and not exceeding in weight 3 tons, shall have the tires of the wheels thereof not less than 3 inches in width, with an additional inch for every ton or fraction of a ton above the first 3 tons; and
- (2.) A Locomotive drawing any waggon or carriage shall have the tires of the driving wheels thereof not less than 2 inches in width for every ton in weight of the Locomotive, unless the diameter of such wheels shall exceed 5 ft., when the width of the tires may be reduced in the same proportion as the diameter of the wheels is increased, but in such case the width of such tires shall not be less than 14 inches; and
- (3.) A Locomotive shall not exceed 9 ft. in width or 14 tons in weight, except as herein-after provided; and
- (4.) The driving wheels of a Locomotive shall be cylindrical and smooth-soled, or shod with diagonal cross-bars of not less than 3 inches in width nor more than three-quarters of an inch in thickness, extending the full breadth of the tire, and the space intervening between each such cross-bar shall not exceed 3 inches.

The owner of any Locomotive used contrary to the foregoing provisions shall for every such offence be liable to a fine not exceeding £5: Provided that the Mayor, Aldermen, and Commons in the City of London, and the Metropolitan Board of Works in the Metropolis, exclusive of the City of London, and the Council of any Borough which has a separate Court of Quarter Sessions, and the County Authority of any County, may, on the application of the owner of any Locomotive exceeding 9 ft. in width or 14 tons in weight, authorise such Locomotive to be used on any Turnpike Road or Highway within the areas respectively above-mentioned, or part of any such road or Highway, under such conditions (if any) as to them may appear desirable. Provided also, that the owner of a Locomotive used contrary to the provisions of sub-section 2 of this Section shall not be deemed guilty of an offence under this Section if he proves to the satisfaction of the Court having cognizance of the case that such Locomotive was constructed before the passing of this Act, and that the tires of the wheels thereof are not less than 9 inches in width.

Amendment of
28 & 29 Vict.,
83, &c.

29. The paragraph numbered "secondly" of Section 3 of the "Locomotive Act, 1865," is hereby repealed, so far as relates to England, and in lieu thereof the following paragraph is hereby substituted; namely,

"Secondly, one of such persons, while the Locomotive is in motion, shall precede by at least 20 yards the Locomotive on foot, and shall in case of need assist horses, and carriages drawn horses, passing the same."

Steam loco-
motives to be con-
structed so as to
consume their
smoke.

24 & 25 Vict., 70.

30. Section 8 of the "Locomotive Act, 1861," is hereby repealed, so far as relates to England; and in lieu thereof, be it enacted that every Locomotive used on any Turnpike Road or Highway shall be constructed on the principle of consuming its own smoke; and any person using any Locomotive not so constructed, or not consuming, so far as practicable, its own smoke, shall be liable to a fine not exceeding £5 for every day during which such Locomotive is used on any such Turnpike Road or Highway.

Power to Local
Authorities to
make Orders as
to hours during
which loco-
motives may pass
over roads.

28 & 29 Vict., 83.

31. Section 8 of the Locomotive Act, 1865, is hereby repealed, so far as relates to England; and in lieu thereof, be it enacted that the Mayor, Aldermen, and Commons in the City of London, and the Metropolitan Board of Works in the Metropolis, exclusive of the City of London, and the Council of any Borough which has a separate Court of Quarter Sessions, and the County Authority of any County, may make bye-laws as to the hours during which Locomotives are not to pass over the Turnpike Roads or Highways situate within the areas respectively above-mentioned, the hours being in all cases consecutive hours and no more than 8 out of the 24, and for regulating the use of Locomotives upon any Highway, or preventing such use upon every bridge where such Authority is satisfied that such use would be attended with danger to the public; and any person in charge of a Locomotive acting contrary to such bye-laws shall be liable to a fine not exceeding £5.

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82. A County Authority may from time to time make, alter, and repeal Bye-laws for granting annual licenses to Locomotives used within their County, and the fee (not exceeding £10) to be paid in respect of each license; and the owner of any Locomotive for which a license is required under any Bye-law so made who uses or permits the same to be used in contravention of any such Bye-law shall be liable to a fine not exceeding 40s. for every day on which the same is so used.

Power of County Authority to license locomotives.

All fees received under this Section shall be carried to and applied as part of the County Rate.

This Section shall not apply to any Locomotive used solely for agricultural purposes.

83. This part of this Act shall remain in force so long only as the "Locomotive Act, 1865," continues in force.

Duration of Part II. of Act. 28 & 29 Vict., 88.

PART III.

Procedure and Definitions.

84. It shall be lawful for the Local Government Board to submit any Provisional Order made by them under this Act to Parliament for confirmation, and without such confirmation a Provisional Order shall not be of any validity.

Confirmation of provisional Order.

85. A Bye-law made under this Act, and any alteration made therein and any repeal of a Bye-law, shall not be of any validity until it has been submitted to and confirmed by the Local Government Board.

Confirmation of bye-laws.

A Bye-law made under this Act shall not, nor shall any alteration therein or addition thereto or repeal thereof, be confirmed until the expiration of one month after notice of the intention to apply for confirmation of the same has been given by the Authority making the same in one or more local newspapers circulating in their County or District.

86. All offences, fines, and expenses under this Act, or any Bye-law made in pursuance of this Act, may be prosecuted, enforced, and recovered before a Court of Summary Jurisdiction in manner provided by the "Summary Jurisdiction Acts."

Recovery of penalties and expenses.

The expression the "Summary Jurisdiction Acts" means the Act of the Session of the 11th and 12th years of the reign of Her present Majesty, chapter 43, intituled, "An Act to facilitate the performance of the duties of Justices of the Peace out of Sessions within England and Wales with respect to Summary Convictions and Orders," inclusive of any Acts amending the same.

The expression "Court of Summary Jurisdiction" means and includes any Justice or Justices of the Peace, Metropolitan Police Magistrate, stipendiary or other magistrate, or officer, by whatever name called, to whom jurisdiction is given by the "Summary Jurisdiction Acts."

Provided that the Court, when hearing and determining an Information or Complaint under this Act, shall be constituted either of 2 or more Justices of the Peace in Petty Sessions, sitting at a place appointed for holding Petty Session, or of some Magistrate or officer sitting alone or with others at some court or other place appointed for the administration of justice, and for the time being empowered by Law to do alone any act authorised to be done by more than one Justice of the Peace.

87. If any party thinks himself aggrieved by any conviction or Order made by a Court of Summary Jurisdiction on determining any Information or Complaint under this Act, the party so aggrieved may appeal therefrom, subject to the conditions and regulations following:

Form of appeal to Quarter Sessions.

- (1.) The appeal shall be made to the next practicable Court of Quarter Sessions for the County or place where the decision appealed from was given holden not less than 21 days after the decision of the Court from which the appeal is made; and
- (2.) The appellant shall, within 10 days after the pronouncing by the Court of the decision appealed from, give notice to the other party and to the Court of Summary Jurisdiction of his intention to appeal and of the ground thereof; such notice of appeal shall be in writing signed by the person or persons giving the same, or by his, her, or their solicitor on his, her, or their behalf; and
- (3.) The appellant shall, within 3 days after such notice, enter into a recognizance before a Justice of the Peace, with 2 sufficient sureties, conditioned personally to try such appeal, and to abide the judgment of the Court thereon and to pay such costs as may be awarded by the Court, or give such other security by deposit of money or otherwise as the Justice may allow; and
- (4.) Where the appellant is in custody the Justice may, if he think fit, on the appellant entering into such recognizance or giving such other security as aforesaid, release him from custody;
- (5.) The Court of Appeal may adjourn the appeal, and upon the hearing thereof they may confirm, reverse, or modify the decision of the Court of Summary Jurisdiction, or remit the matter to the Court of Summary Jurisdiction with the opinion of the Court of Appeal thereon, or make such other Order in the matter as the Court thinks just, and if the matter be remitted to the Court of Summary Jurisdiction the said last-mentioned Court shall thereupon re-hear and decide the information or complaint in accordance with the opinion of the said Court of Appeal. The Court of Appeal may also make such Order as to costs to be paid by either party as the Court thinks just.

88. In this Act—

"County" has the same meaning as it has in the "Highway Act, 1862 and 1864," except that every Liberty not being assessable to the County Rate of the County or Counties within which it is locally situate shall, for the purposes of this Act other than those relating to the formation and alteration of Highway Districts, and the transfer of the powers of a Highway Board, be deemed to be a separate County:

Interpretation. 25 & 26 Vict., 61. 27 & 28 Vict., 101.

"County Authority" means the Justices of a County in General or Quarter Sessions assembled:

"Borough" means any place for the time being subject to the Act of the Session of the 5th and 6th years of the reign of King William IV., chapter 76, intituled "An Act to provide for the regulation of Municipal Corporations in England and Wales," and the Acts amending the same:

"Highway District" means a District constituted in pursuance of the "Highway Act, 1862," and the "Highway Act, 1864," or one of such Acts:

25 & 26 Vict., 61. 27 & 28 Vict., 101.

"Highway Board" means the Highway Board having jurisdiction within a Highway District:

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- 25 & 26 Vict., 61. "Highway Pariah" means a Pariah or place included or capable of being included in a Highway District in pursuance of the "Highway Acts, 1862 and 1864," or one of such Acts :
27 & 28 Vict., 101. "Highway Authority" means as respects an Urban Sanitary District the Urban Sanitary Authority, and as respects a Highway District the Highway Board, and as respects a Highway Pariah the Surveyor or Surveyors or other officers performing similar duties :
28 & 29 Vict., 55. "Rural Sanitary District" and "Rural Sanitary Authority" mean respectively the Districts and Authorities declared to be Rural Sanitary Districts and Authorities by the "Public Health Act, 1875 :"
38 & 39 Vict., 55. "Urban Sanitary District" and "Urban Sanitary Authority" mean respectively the Districts and Authorities declared to be Urban Sanitary Districts and Authorities by the "Public Health Act, 1875," except that for the purposes of this Act no Borough having a separate Court of Quarter Sessions, and no part of any such Borough, shall be deemed to be or to be included in any such District, and where part of a Pariah is included in such District for the purpose only of the repairs of the Highways such part shall be deemed to be included in the District for the purposes of this Act :
18 & 19 Vict., 120. "The Metropolis" means the Parishes and places mentioned in the Schedules A., B., and C., annexed to the "Metropolis Management Act, 1855," and any Pariah to which such Act may be extended by Order in Council in manner in the said Act provided ; also the City of London and the liberties of the said City :
"Quarter Sessions" includes General Sessions :
"Petty Sessional Division" means any Division for the holding a Special Sessions formed or to be formed under the provisions of the Act of the 9th year of the reign of His late Majesty King George IV., chapter 43, or any Act amending the same ; also any division of a County, or of a Riding, Division, Parts, or Liberty of a County, having a separate commission of the peace, in and for which Petty Sessions or Special Sessions are usually held, whether in one or more place or places, in accordance with any custom, or otherwise than under the said last-mentioned Act ; but does not include any City, Borough, Town Corporate, or District constituted a Petty Sessional Division by the Act of the Session of the 12th and 13th years of the reign of Her present Majesty, chapter 18, intituled "An Act for the holding of Petty Sessions of the Peace in Boroughs, and for providing places for the holding of such Petty Session in Counties and Boroughs :"
"Locomotive" means a Locomotive propelled by steam or by other than animal power :
"Person" includes a body of persons corporate or unincorporate.

[The following Statute was unfortunately omitted from its proper place on p. 45, *ante*.]

A.D. 1849. [12 & 13 VICT.] *Highways (Annual Returns).* [C. 35.]



12 & 13 VICT., c. 35.

Revised Statutes,
vol. x., p. 611.

An Act for requiring Annual Returns of the expenditure on Highways in England and Wales to be transmitted to the Secretary of State,^(a) and afterwards laid before Parliament.

(13th July, 1849.)

5 & 6 WILL. IV.,
50.

WHEREAS by an Act passed in the 6th year of King William IV., intituled "An Act to consolidate and amend the Laws relating to Highways in that part of Great Britain called England," it was enacted, that within one calendar month after the election or appointment of Surveyor as therein directed the accounts for the year preceeding of monies received and disbursed by virtue of the said Act should be signed by the Surveyor, District Surveyor, or Assistant Surveyor for the year preceeding, and laid before the Justices of the Peace at a Special Sessions for the Highways holden at the place nearest to the Pariah or District for which such Surveyor should have been appointed ; and that at a Special Sessions for executing the purposes of the said Act held next after the 25th day of March in every year by the Justices of the Peace within their respective Divisions the Surveyor of each of the Parishes within such respective Divisions should verify his accounts : And whereas it is expedient that annual statements of the receipts and expenditure on Highways in England should be transmitted to one of the Secretaries of State, to the intent that abstracts thereof may be laid before both Houses of Parliament : Be it enacted, &c.

(a) Now the Local Government Board. (40 & 41 Vict., 66, § 1.)

Part I.—STATUTES.

[12 & 13 VICT.]

Highways (Annual Returns).

[C. 35.]

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A.D. 1849.

At the Special Sessions in each Division at which the accounts of any Surveyors, District Surveyors, and Assistant Surveyors shall be produced and verified as by the said recited Act required the Clerk to the Justices shall prepare from such accounts a separate statement in writing, according to the form in the Schedule to this Act, of the receipts and expenditure on account of the Highways of each Parish in such Division, and shall, within 14 days after such Special Sessions, transmit all such statements to *one of Her Majesty's principal Secretaries of State*;

And for the preparation and transmission of each such statement such Clerk shall be entitled to charge to the respective Parish the fee of 2s.

And if any such Clerk to such Justices shall neglect to transmit any such statement within the time herein-before prescribed for that purpose, he shall for every such offence, on conviction, forfeit any sum not exceeding £5 nor less than 40s., and such penalty shall be recovered and applied as penalties are by the said Act made recoverable and applicable.

2. The Town Clerk of every City, Borough, Port, Cinque Port, or Town Corporate subject to the provisions of the Act passed in the 7th year of King William IV., "to provide for the Regulation of Municipal Corporations in England and Wales," and the Clerk to the Trustees or Commissioners appointed under any Act of Parliament where the Council of such City, Borough, Port, Cinque Port, or Town Corporate, or such Trustees or Commissioners, are authorised to pave, cleanse, or repair any Highway, shall, within 30 days next after every annual or other periodical account of the receipts and expenditure of such Council, Trustees or Commissioners, in respect of the Highways under their management has been made out, or where provision is made for the settlement or audit of such account, then within 30 days after such settlement or audit, prepare from such account a statement in writing, showing (as far as circumstances will permit) the like particulars of such receipts and expenditure as are indicated under the heads of receipts and expenditure respectively in the form contained in the Schedule to this Act, and shall, within the time aforesaid, transmit such statement to *one of Her Majesty's principal Secretaries of State*;

And if such Town Clerk or Clerk to the Trustees or Commissioners shall neglect to transmit any such statement within such time as aforesaid, he shall for every such offence, on conviction, forfeit any sum not exceeding £10 nor less than £5, and such penalty shall be recovered and applied as penalties are by the said Act made recoverable and applicable.

3. Such *Secretary of State* shall every year cause the statements transmitted to him under this Act to be abstracted, and the abstracts thereof to be laid before both Houses of Parliament.

4. The said first-recited Act and this Act shall be construed together as one Act.

* * * * *

Clerks to Justices to prepare Statements from Accounts of Surveyors of Highways, and transmit them to Local Government Board.

Penalty on neglect.

Town Clerks and Clerks to Trustees and Commissioners, to prepare statements of accounts respecting Highways, and transmit them.

Penalty on neglect.

Abstracts to be laid before Parliament.
Acts to be construed as one.

SCHEDULE.

GENERAL STATEMENT of the Receipts and Expenditure on account of the Highways of the Parish [Township, Hamlet, &c.] of _____ in the County of _____ for the year ending 25th March, 18____, as appearing from the accounts of _____ Surveyor of Highways for the said Parish [Township, Hamlet, &c.], allowed by the Justices at a Special Sessions for the Highways holden at _____ on the _____ day of _____

Receipts.

	£	s.	d.
Balance in hand (if any) from last account
Rates or Assessments received in money
Value of team labour performed by Ratepayers in lieu of Rates
Value of other work performed by Ratepayers in lieu of Rates
Receipts from Turnpike Trusts (if any)
Other receipts

Total Income £

Expenditure.

	£	s.	d.
Balance overpaid (if any) on last account
Paid for manual labour
" for team labour (in money)
" for materials
" for tradesmen's bills
" for salaries
Value of team labour performed by Ratepayers in lieu of Rates
Value of other work performed by Ratepayers in lieu of Rates
Payments to Turnpike Trusts (if any)
Other payments

Total Expenditure £

Leaving on the 25th March, 18____, a Balance of £
in hand, or overspent, as the case may be.

(Signed)

Clerk to the Justices for the Division.

Dated

18 .

PART II.

Digest of Cases.

THE following explanations as to the objects aimed at in this Digest may conveniently be given as a guide to the reader consulting it.

Where a decision was appealed against, references to Reports of the Case in its earlier stages are usually omitted unless the facts and arguments were not set forth with satisfactory fullness at the final stage.

Much confusion often arises in citing references to periodicals running over a long term of years, where there exists an "Old" and a "New" Series of each. Having considered this matter in connection with the *Law Journal* and *Law Times*, and bearing in mind that the "New Series" of each of these periodicals has now been going on for many years, and that references to the "Old Series" are not only few, but cannot increase, it has been decided on reflection to suppress the letters "N. S." usually appended to references to the above-named periodicals, and to do the converse thing, that is, append the letters "O. S." to such references as apply to the "Old Series" of each respectively. This arrangement, it is to be understood, is limited to the *Law Journal* and *Law Times*, and does not extend to any other works, so that the *Common Bench Reports*, for instance, are cited in the usual way, "*Common Bench*," and "*Common Bench, New Series*," and so on in other instances.

The ample Index appended, coupled with a little ingenuity on the part of the reader in always turning to more heads than one, will, it is hoped, render reference to the Cases a task free from serious difficulty.

Though the *Weekly Reporter* is not as a rule cited, many of the Cases will be found therein. The dates appended will facilitate search. The *Weekly Reporter* and the *Jurist* are usually only cited in instances where no other Report was to be had, but this has not been from any distrust of the *Weekly Reporter* at any rate, because I have often found that to be a very trustworthy and useful publication. It was necessary, however to draw the line somewhere, or there would have been a superfluity of references in many places.

Cases which are obsolete by reason of subsequent legislation, or because they have been over-ruled, are usually suppressed altogether. If in a few instances the titles of such Cases have been given with an asterisk prefixed, this has been done because it was judged convenient for some reason or other that arguments or *Dicta* mentioned in the Reports of these Cases should not be entirely lost from record.

The reader who concerns himself with such details will find that great pains have been taken to exhibit the references not only correctly but methodically. Every reference has been specially verified and very carefully read at press. It should be stated, however, that this remark does not apply to the *Justice of the Peace*, for the Library of my Inn (the Inner Temple), does not contain a file of that useful periodical, the Benchers judging it unworthy of a place on their Library shelves. The *J.P.* references are therefore often second-hand, and I have no means of guaranteeing the accuracy of the earlier ones.

Care has been taken in the Index to distinguish Cases of the same name from one another, and I likewise hope that in no instance has the same Case been printed by mistake, under 2 or more names, though I can recall many instances in leading publications of duplicate and triplicate entries thus made, doubtless inadvertently, but to the great inconvenience of readers.

In the course of making my selection of Cases I have frequently found myself much embarrassed by the difficulty of deciding whether a given Case should be deemed to belong to the subject of Highways or to the subject of Public Health and Local Government : in other words whether it ought to appear here, or in my *Digest of the Law relating to Public Health*. I mention the matter because the Legal Practitioner will sometimes be able to find in the volume named Cases which he will look for here unsuccessfully, they being Cases which stand on the border line, and are somewhat more closely connected with Streets in towns than with Highways generally.

In the same way Cases relating to Highway Rates have as a rule been reserved for my work on *Rates and Rating*, the instances being very few indeed in which a Highway Rate Case does not apply generally in its principles to all Rates.

CHAPTER I.

APPOINTMENT AND GENERAL POWERS OF AUTHORITIES MANAGING HIGHWAYS.

(1.) HIGHWAY BOARDS.

1. 1865. *Giles v. Glubb*. "Highway Act, 1862," §§ 2 and 5—Ancient Borough having Charters with non-intromittent clauses, and being entirely within the limits of its County, held, notwithstanding § 2, to be properly included within a Highway District by the County Justices. (12 Jur., (N. S.), 389; 13 L. T., 526.)

2. 1839. *Reg. v. Bush*. "Highway Act, 1835," § 18—Parish comprising several Tithings, each of which had always repaired its own highways—Surveyors appointed by the different Tithings sitting together as a Board and making a separate rate for each Tithing—Such Rates held bad because made by the so-called Board, and not by the respective Surveyors. (8 L. J., M. C., 39; 9 A. & E., 820; 1 P. & D., 586.)

2a. 1878. *Reg. v. Cumberland JJ.* "Highway Act, 1862," § 6—"Highway Act, 1864," § 46—Provisional Order to withdraw certain Townships from a Highway District quashed by Quarter Sessions—Held, that these proceedings were void, the Court being improperly constituted, one of the Justices present being a member of the Highway Board concerned, and having himself appeared by Counsel against the Confirmation of the Order which had been quashed—*Quære*, Whether the mere giving of evidence simply, in such a matter, would have disentitled him to vote? (42 J. P., 361.)

3. 1865. *Reg. v. Heath*. "Highway Act, 1862," § 20—Indictment by Highway Board against an individual for an encroachment—Conviction—Taxed Costs held an "expense in relation to a Highway" which was payable by the Township. (12 L. T., 492; [*Heath v. West Eddisbury H. B.*] 13 W. R., 805.)

4. 1863. *Reg. v. How*. "Highway Act, 1835," § 18—The Common Law right to demand a poll is not affected by a statutory enactment giving power to a majority of Vestrymen present at a meeting to form a Highway Board. (33 L. J., M. C., 53; 9 L. T., 385; 27 J. P., 773.)

5. 1868. *Reg. v. Kingsbridge H. B.* "Highway Act, 1864," § 32—A Highway Board having incurred expenses in opposing a Bill in Parliament held to have no power to charge them on the Parishes, even though the Bill affected such Parishes and the opposition was *bonâ fide* and likely to be beneficial—The expenses could not be said to be incurred for the common use or benefit of the whole District—*Quære*, Whether the sanction of the various Vestries would have justified the Board in taking proceedings? (18 L. T., 554; 16 W. R., 1115.)

6. 1865. *Reg. v. Lindsey JJ.* "Highway Act, 1862," §§ 8 and 10; "Highway Act, 1864," § 12—An Order for the formation of a Highway Board fixing the first

High. O

meeting for the Thursday after March 25, held valid, the Quarter Sessions not being bound to appoint a day which would be after the expiration of the time limited by law for the election of Waywardens, viz. within 14 days after March 25—As a matter of practice it is better to postpone the day to one of the 7 days after such limited time—When a Rule *nisi* for a *Certiorari* to remove an Order with the view to quashing it is obtained within 3 months the case is taken out of the operation of § 8, though the Rule may not be returnable till after the 3 months. (35 L. J., M. C., 90; L. R., 1 Q. B., 68; 6 B. & S., 892; 13 L. T., 524.)

7. 1864. *Reg. v. Sussex*. "Highway Act, 1862," § 5—When Justices propose to form a Highway District it is a condition precedent that notice be first sent to all the Parishes proposed to be included, and the Order is bad if any Parish has not had notice. (28 J. P., 469.)

8. 1865. *Reg. v. Yorkshire, (W. R.) JJ.* "Highway Act, 1862," § 6—Highway District—Three hamlets in one township, each hamlet maintaining its own highways—Provisional Order appointing one Waywarden for the entire township—Order silent as to combining the three hamlets under § 7—Order held bad. (34 L. J., M. C., 227; 12 L. T., 580.)

(2.) SURVEYORS OF HIGHWAYS.

9. 1874. *Barton v. Piggott*. "Highway Act, 1835," § 46—Surveyor of Highways charging in his accounts for work done by his own horses without previous written Order of Justices—Held, that such charges ought to have been disallowed by the Justices. (44 L. J., M. C., 5; 31 L. T., 404; 39 J. P., 454.)

10. 1876. *Denny v. Thwaites*. "Highway Act, 1835," § 67—Covered brick drain laid down by owner of a house at the point where his carriage drive opened on the highway—Held, that interference on the part of a Highway Surveyor with such drain was not a "wilful or malicious injury to property" within 24 & 25 Vict., c. 97, § 52—Consideration of the circumstances under which an interference with private property is justifiable on the part of a Highway Surveyor. (46 L. J., M. C., 141; L. R., 2 Ex. D., 21; 41 J. P., 164.)

11. 1869. *Derby (Earl of) v. Bury Improvement Commissioners*. "Nuisances Removal Act, 1855," § 22: "Highway Act, 1835," § 67—Local Act authorising the construction of drains with notice; General Act the same without notice—Commissioners under Local Act held entitled to proceed either under the Local or the General Act—A Local Authority in laying down a new Sewer is not bound to follow the line of an old water-course. (38 L. J., Ex., 100; L. R., 4 Ex., 222; 20 L. T., 927.)

12. 1871. *Driver v. Kingston H.B.* Adoption by a Parish of "Public Health Act, 1848"—Repair of highways—Outstanding contract with the Highway Board which formerly comprised such Parish—The Board continued to repair with materials supplied by the Plaintiff for 4 months after the resolution adopting the Act—Held, that the Plaintiff was on the facts entitled to recover as for goods sold and delivered, and that the answer that the proceeding was *ultra vires* on the part of the Board could not prevail. (24 L. T., 480; 20 W. R., 20.)
13. 1860. *Ellis v. Woodbridge.* "Highway Act, 1835," § 24—Bridle-way—A Highway Surveyor is not bound to bar the entrance to a bridle-way against vehicles—§ 24 refers only to causeways by the side of carriage ways. (29 L. J., M. C., 183; 2 L. T., 237.)
14. 1841. *Groomsmitth, Ex parte.* "Highway Act, 1835," § 6—Election of Surveyor—Two candidates—Show of hands—Poll demanded but refused—Refusal of Justices to put in force § 11 of the Act which permits Justices in certain cases to appoint a Surveyor, they being of opinion that as a poll had been refused by the Chairman of the Vestry the candidate who had a majority on the show of hands was not duly elected—Rule nisi for a *Mandamus* to inhabitants to meet in Vestry for a poll. (10 L. J., Q. B., 359; 5 Jur., 551.)
15. 1825. *Lowen v. Kay.* "Highway Act, 1773," §§ 6 and 64 [Repealed]—Road less than 30 feet wide—Held that the Surveyor was not entitled to remove a fence in front of a house in order to widen a highway unless the fence supposed to be an encroachment was actually on the highway. (3 L. J., (O. S.), K. B., 123; 4 B. & C., 3; 6 D. & R., 20.)
16. 1864. *Mariborough (Duke of) v. Osborn.* An obligation to furnish "team-work" with 2 horses and 1 driver does not imply that the owner of the team is to furnish a cart also. (5 B. & S., 67; 10 L. T., 28.)
17. 1844. *Peters v. Clarkson.* "Highway Act, 1835," §§ 54, 67, and 68—Trespass does not lie against a Surveyor for entering lands and making a drain without tendering amends, the ascertainment of the damage and the payment of the amount not being a condition precedent to the authority to enter—Justices in such case to ascertain the damages payable. (13 L. J., M. C., 153; 7 M. & G., 548; 8 Scott, N. R., 384; 1 New Sess. Cas., 510.)
18. 1847. *Reg. v. Best.* "Highway Act, 1835," § 11—Appointment of Surveyor by Justices on neglect of Parish to appoint held bad because made at same Sessions at which such neglect was notified—A Vestry for purposes of the "Highway Act" must be duly convened under the "Vestries Act, 1818"—Where 2 rates are coexistent it will not be presumed that they are concurrent and therefore invalid. (16 L. J., M. C., 102; 5 Dowl. & L., 40; 2 New Sess. Cas., 655.)
19. 1864. *Reg. v. Bluffield.* "Highway Act, 1862," § 43—When a Parish becomes incorporated into a Highway District, it is the duty of the Surveyors about to be superseded to collect an outstanding Rate—The words "and then remaining unpaid" in § 43 mean remaining unpaid at the end of 7 days from the appointment of the District Surveyor. (11 L. T., 337.)
20. 1872. *Reg. v. Cooper.* *Quo Warranto*—Election of a Waywarden—Poll demanded but not taken because of alleged retirement of candidate who obtained a majority of votes on the show of hands—Held that as there was no Poll taken a certificate that such candidate had been elected was invalid. (39 L. J., Q. B., 273; L. R., 5 Q. B., 457.)
21. 1876. *Reg. v. Drayton H. B.* "Highway Act, 1835," § 48—Competitive offers are not to affect the "fair and reasonable" price at which a person entitled to a right of pre-emption is to be allowed to purchase surplus land. (L. R., 1 Q. B. D., 608.)
22. 1852. *Reg. v. Hillingdon, Vicar.* "Highway Act, 1835," § 6—Meeting to appoint Surveyors—Show of hands—Agreement to abide by decision of a Poll then and there taken and in accordance with the "Vestries Act, 1818"—Held that the Meeting having unanimously agreed to a Poll, limited as above, no one was entitled to demand afterwards a general Poll of the whole Parish—Election held good. (18 Q. B., 718; 19 L. T., (O. S.), 184.)
23. 1856. *Reg. v. Kershaw.* "Highway Act, 1835," § 6—Election of Surveyor—Held that a person rateable, though not rated, is entitled to vote. (26 L. J., M. C., 19; 6 E. & B., 999; 28 L. T., (O. S.), 101.)
24. 1849. *Reg. v. Paynter.* "Highway Act, 1835," §§ 27 and 113—§ 113 does not exempt from the ordinary Highway Rate a bridge paved, &c., under a Local Rate—Such exemption applies only to the interference of Highway Surveyors with such a bridge. (18 L. J., M. C., 169; 13 Q. B., 399; 12 L. T., (O. S.), 450.)
25. 1859. *Reg. v. Richardson.* Surveyor of Highways having authority to order gravel for roads doing so and applying it to his own use held not liable on a charge of obtaining it by false pretences—Nor for larceny unless it appeared that he did not mean to pay for it. (1 F. & F., 488.)
26. 1844. *Reg. v. Rose.* "Highway Act, 1835," § 27—"Usually rated" refers to a matter of fact as to the practice of rating in the particular parish. (13 L. J., M. C., 155; 6 Q. B., 153; 1 Dav. & M., 300; 1 New Sess. Cas., 272.)
27. 1855. *Reg. v. Saunders.* "Highway Act, 1835," § 27—"Usually rated" applies not only to Mines actually rated previously, but also to Mines of the same description opened subsequently. (24 L. J., M. C., 57; 24 L. T., (O. S.), 235; [Reg. v. Randall] 4 E. & B., 564.)
28. 1855. *Reg. v. Uttormore.* "Highway Act, 1835," §§ 29 and 111—*Semble* the limitation of Rate in § 29 does not apply when funds have to be raised by an "additional Rate," under § 111 for legal proceedings to defend an Indictment for non-repair—The words "in the same manner," in § 111 apply only to the method of making and collecting the Rate. (26 L. T., (O. S.), 94; 29 J. P., 36.)
29. 1797. *Rea v. Baldwin.* If there be an objection to the appointment of Surveyors the party objecting should first remove the appointments by *Certiorari*, and then move to quash them—An objection to the appointment of 3 Surveyors, each for a particular division of a Parish, overruled, it appearing that such a mode of appointment had prevailed for several years. (7 T. R., 169.)
30. 1803. *Rea v. Denbysire.* "Highway Act, 1773," § 1 [Repealed]—This is only directory to the Justices to make the appointment at the time mentioned; but there are no negative words to prevent them from doing so at any subsequent Special Sessions if it shall be necessary; and common sense requires that if the appointment be not made at the first Special Sessions, it should be made afterwards. (4 East, 142.)
31. 1831. *Rea v. King's Newton Inhabitants.* The appointment of separate Surveyors for separate Townships of a Parish may be good by usage or custom—Parish comprising 2 Townships—Surveyor chosen for each—Subsequently, to save expense, 2 were appointed at one general Vestry, one for each Township—Separate Rates, expenditure, and accounts, but one allowance by Vestry—Occupiers rated in each Township for the roads thereof only—Held sufficient evidence that each Township was immemorially bound to repair its own roads, and therefore that there might be separate appointments of Surveyors. (9 L. J., (O. S.), M. C., 54; 1 B. & Ad., 826.)
32. 1835. *Rea v. Round.* *Mandamus* to Surveyor of Highways after expiration of his term of office to deliver up books—Return that neither on the day of

the *Teste*, nor since, nor now, nor when applied to on behalf of the Churchwardens had he any such books; not stating whether he had had them between the Requisition and the *Teste*, nor what he had done with them—Return held good but costs refused; the return ought to have been fuller. (4 A. & E., 139; 5 N. & M., 427.)

33. 1825. *Rea v. St. Albans JJ.* "Highway Act, 1773," § 81 [Repealed]—An appointment of Surveyors cannot be removed into the Queen's Bench by *Certiorari*—The remedy for a bad appointment is appeal to the Sessions, a bad appointment being a thing done in pursuance of the Act and every inhabitant being thereby "aggrieved." (3 B. & C., 698; 5 D. & R., 538.)

34. 1859. *Sutcliffe v. Sowerby Highway Surveyors.* Footway across a Brook formed of Stepping-stones—Stones reduced in number by the Surveyors and the foot-way made continuous by means of flag-stones—Held that the Surveyors had been guilty of a trespass, and that the adjacent Landowner was justified in

removing the flag-stones, and ought not to have been convicted under § 72. (1 L. T., 7; 8 W. R., 40.)

35. 1865. *Wakefield v. Seneschall.* "Highway Act, 1835," § 46—A Surveyor who does repairs without the consent of the Vestry, doing the work himself without the necessary Certificate from 2 Justices, is not entitled to be repaid the cost of materials or labour supplied by him. (29 J. P., 375.)

36. 1859. *Whitaker, Ex parte.* "Highway Act, 1835," § 72—Surveyor convicted for removing Stepping-stones over a Brook, and substituting a Bridge—Conviction held bad—Such an act is within his powers. (23 J. P., 84.) [See *Sutcliffe v. Sowerby.*]

37. 1865. *Wreatham H. B. v. Hardcastle.* "Highway Act, 1835," § 42: "Highway Act, 1862," §§ 11 and 43—A, a Surveyor went out of office on March 25, and B was appointed his successor—B never acted, for within a few days a Highway Board was formed—Held that A was the "out going" Surveyor, with duties and privileges accordingly. (19 C. B., (N. S.), 177.)

CHAPTER II.

LEGAL PROCEEDINGS BY AND AGAINST URBAN SANITARY AUTHORITIES MANAGING HIGHWAYS, HIGHWAY BOARDS, AND PARISH SURVEYORS.

38. 1832. *Alston v. Scates.* A Surveyor is liable to a reversioner for cutting away a portion of a bank by the side of a road though the property is improved thereby—Removal of the smallest portion of soil must in general be esteemed an injury to land, as tending to alter the evidence of title. (1 L. J., M. C., 95; 9 Bing., 3; 2 M. & Scott, 5.)

39. 1845. *Barber, In re.* "Attorneys and Solicitors' Act, 1843," § 6 & 7 Vict., c. 73, § 37—Attorney employed by Highway Surveyor to conduct an Indictment for an obstruction and for other business—Whole Bill of Costs paid out of Highway Rate—Held that Rate-payers were not persons "liable to pay" within the above Enactment, and could not therefore apply to have the Bill taxed. (15 L. J., Ex., 9; 14 M. & W., 720; 3 Dowl. & L., 244.)

40. 1811. *Boyfield v. Porter.* "Highway Act, 1773," §§ 27 and 29 [Repealed but re-enacted in nearly the same terms in the "Highway Act, 1835," §§ 51 and 54]—Surveyors having broken a new way over the Plaintiff's Land in order to move materials to be used for repairs although an old but circuitous road existed; and having after the damage done, and after an Action of Trespass brought against them, paid money into Court by way of amends—Held that the sufficiency of such amends could not be questioned at *Nisi Prius*, the Statute having referred the *quantum* of amends, if not agreed upon, to Justices—But it is competent to the plaintiff in such Action to show that the making of such new road over his land was maliciously or wantonly done by the Surveyors, and not for the necessary or convenient conveyance of the materials over the land for the purposes of the Act; and in such case he would not be concluded by the amends tendered or paid into Court. (13 East, 200.)

41. 1845. *Davis v. Curling.* "Highway Act, 1835," § 109—Alleged neglect of Surveyor to remove or protect a heap of gravel—Held that the defendant was entitled to notice of Action. (15 L. J., Q. B., 56; 8 Q. B., 286.)

42. 1839. *Duncan v. Findlater.* The Trustees under a public Road Act held not responsible for an injury occasioned by the negligence of the men employed in making or repairing their road—The funds raised under such Act cannot be charged with compensation for such an injury; the persons employed on the road not being in the situation of servants to the Trustees. (6 Cl. & Fin., 894.) [A Scotch case containing a summary of previous English decisions.]

43. 1870. *Gibson v. Preston, Mayor.* "Public Health Act, 1848," § 68—A Local Board is not liable to an Action for injuries received owing to the non-repair of a highway. (39 L. J., Q. B., 131; L. R., 5 Q. B., 218; 10 B. & S., 942; 22 L. T., 293; 34 J. P., 342.)

44. 1861. *Hardwick v. Moss.* "Highway Act, 1835," § 109—Erection of Weighing-machine—Excavation made in highway for the purpose of placing the machine, and materials excavated left in a heap and unlighted—Accident to Vehicle—A Surveyor who has reasonable ground for believing that he is acting "under the authority of the Act" is entitled to notice of Action. (31 L. J., Ex., 205; 7 H. & N., 136; 4 L. T., 802.)

45. 1876. *Tolland v. Northwich H. B.* "Highway Act, 1835," § 109—Neglect to repair a handrail on a bridge—Injury to traveller—Such an act of omission to repair held to come within the definition of "something done under the Statute," and notice of Action necessary. (34 L. T., 137; 40 J. P., 317.)

46. 1846. *Huggins v. Wayday*. "Highway Act, 1835," § 109—Tree cut down by Surveyor informally appointed but *bonâ fide* believing the contrary and acting in pursuance of the Act—Action for Trespass—Held, that the Surveyor was entitled to Notice of Action. (16 L. J., Ex., 136; 15 M. & W., 357.)

47. 1875. *Mill v. Hamker*. "Highway Act, 1862," § 9 (6) and § 16—Obstruction—Liability of members of a Board for acts that are *ultra vires* and amount to a trespass—Officer obeying orders of that character—Certain members of a Highway Board, and the Surveyor, held liable personally for a trespass. (44 L. J., Ex., 49; L. R., 10 Ex., 92; 33 L. T., 177; 39 J. P., 181.)

48. 1864. *Ohrby v. Ryde Commissioners*. "Towns Improvement Clauses Act, 1847," § 52—Neglect to fence a dangerous footpath—Defendants held liable—Commissioners acting gratuitously in the discharge of a public duty are liable for an injury caused by a breach of duty on their part, without proving that they possess funds or the means of raising funds. (33 L. J., Q. B., 296; 5 B. & S., 743.)

49. 1867. *Parsons v. St. Matthew's, Bethnal Green, Vestry*. The Common Law liability being on the Parish, an action for non-repair of a highway will not lie against a Vestry under the "Metropolis Local Management Act, 1855." (37 L. J., C. P., 62; L. R., 3 C. P., 56; 17 L. T., 211.)

50. 1857. *Reg. v. Arnould*. "Highway Act, 1835," § 94—On a summons against a Surveyor or other person for non-repair, if the obligation to repair is denied, the Justices have no jurisdiction to make an Order; but are bound under § 95 to direct that an Indictment be preferred. (27 L. J., M. C., 92; 8 E. & B., 550; [*Reg. v. Berkshire JJ.*] 30 L. T., (O. S.), 149.)

51. 1839. *Reg. v. Bedfordshire JJ.* "Highway Act, 1835," § 105—Notice of appeal against a conviction by 2 Justices—Notice served on Surveyors and on only one Justice, though addressed to both, held bad. (9 L. J., M. C., 8; 11 A. & E., 134; 3 P. & D., 21.)

52. 1867. *Reg. v. Burrell*. Trifling encroachment on a highway sanctioned verbally by the Officers of the Trustees, and afterwards approved by the Trustees, but such approval not entered in the Minute Book—Held that the defendant was, under the circumstances, improperly convicted of an encroachment. (16 L. T., 572; 10 Cox, C. C., 462.)

53. 1863. *Reg. v. Dukinfield Township*. "Highway Act, 1835," § 23: "Public Health Act, 1848," §§ 69–70—Highway—Dedication—In places where a Local Board are Surveyors, the "Highway Act, 1835," is constructively superseded so far as regards the steps to be taken to secure the "adoption" of a road, and therefore the road must be made to the satisfaction of the Board. (32 L. J., M. C., 230; 4 B. & S., 158.)

53a. 1797. *Rea v. Bagshaw*. "Highway Act, 1773," § 82 [Repealed]—Inquisition by Jury to assess compensation—It must appear on the face of the proceedings that notice has been given to the owners of the land. (7 T. R., 363.)

54. 1836. *Reg. v. Norwich & Watton Road Trustees*. "Turnpike Act, 1822," § 85—Compensation for taking land—Where there are several parties with separate interests in the same premises, the Inquisition must specify the compensation to be given to each—An Inquisition awarding a lump sum to the whole of the parties, quashed. (6 L. J., K. B., 41; 5 A. & E., 563; 1 N. & P., 32; 2 H. & W., 385.)

55. 1840. *Riaz v. Borton*. "Highway Act, 1835," § 109—The enactment that 21 days' notice of Action is to be given to Justices, &c., does not by implication repeal the privilege of a Justice to have, under 24

Geo. II., c. 44, § 1, a month's notice. (9 L. J., M. C., 93; 12 A. & E., 470; 4 P. & D., 182.)

56. 1812. *Roberts v. Read*. "Highway Act, 1773," § 81 [Repealed]—Wall adjoining a highway undermined by Surveyors—Eventual fall thereof—The limitation of time for bringing an Action held to run not from the date of the undermining, but from the date of the accident. (16 East, 215.)

56a. 1878. *Robinson v. Stevenitt*. "Highway Act, 1835," § 20—Summons under § 20 against a Surveyor for neglecting to repair a road—No proceedings under § 94—Held that the procedure pointed out in § 94 must be followed, and that the Surveyor could not be convicted summarily under § 20. (38 L. T., 611; 42 J. P., 356.)

57. 1847. *Smith v. Hopper*. "Highway Act, 1835," § 109—Surveyor ordered by Highway Board to remove a gate which obstructed a supposed ancient foot-way without first applying to Justices—Action for Trespass against various members of the Board and the Surveyor—Held that notice of Action was necessary, the act being done *bonâ fide*, and not being utterly unreasonable. (16 L. J., Q. B., 93; 9 Q. B., 1005; 8 L. T., (O. S.), 469.)

58. 1874. *Taylor v. Greenhalgh*. "Highway Act, 1835," § 56—Highway—Contract to repair—Injury resulting from neglect of contractor to place a fence or light—Held that no Action lay against Surveyor. (43 L. J., Q. B., 168; L. R., 9 Q. B., 487; 31 L. T., 184; 38 J. P., 599.)

59. 1877. *Taylor v. Maltham L. B. H.* "Highway Act, 1835," § 109: "Public Health Act, 1848," §§ 117 and 139—Held that an Action of Trespass commenced after the expiration of the 3 months mentioned in the former Act, but before the expiration of the 6 months mentioned in the latter Act, was commenced in time, the later Act operating to extend the earlier one. (47 L. J., C. P., 12.)

60. 1825. *Underhill v. Ellthorpe*. "Highway Act, 1773," § 34 [Repealed]—Held that Surveyors could not maintain an action for debt to recover composition money, duly assessed in lieu of Statute Duty, a specific remedy by Distress having been prescribed—When a Statute prescribes a particular remedy, that remedy must be taken, and no other. (McClelland & Y., 450.)

61. 1875. *White v. Hindley L. B.* Street grating out of repair—Accident to a horse—Board held liable, it being a case of non-repair of sewer, not non-repair of highway. (44 L. J., Q. B., 114; L. R., 10 Q. B., 219; 32 L. T., 460; [*W. v. Wigan*] 39 J. P., 533.)

62. 1861. *Whitehouse v. Fellows*. "General Turnpike Act, 1822," § 147—Negligent formation of a drain by the side of a road—Trustees held liable for consequential damage, though they had acted *bonâ fide*—When a Statute limits a time for Actions, such time runs from the act done, unless there be a continuing trespass, or a consequential injury, in which latter cases time runs only from the cessation of the trespass or the happening of the injury. (30 L. J., C. P., 305; 10 C. B., (N. S.), 765; 4 L. T., 177.)

63. 1832. *Witham Navigation Co. v. Padley*. "Highway Act, 1773," §§ 12 and 82 [Repealed]—Action for Trespass against Surveyors for removing a watch-house—Power to Surveyors to remove Nuisances on Highways held not to authorise them to pull down a building—They should have resorted to their remedy at Common Law. (2 L. J., M. C., 29; 4 B. & Ad., 69.)

64. 1863. *Young v. Davis*. "Highway Act, 1835," § 109—No Action lies against a Surveyor for damage resulting from neglect to repair a highway—The proper remedy would be by Indictment against the Parish. (2 H. & C., 197; 9 L. T., 145.)

CHAPTER III.

HIGHWAY ACCOUNTS, INCLUDING AUDIT.

68. 1858. *Adams v. Lakeman*. "Highway Act, 1835," § 44 imposing penalty on Surveyor for not accounting, only applies to an ordinary Surveyor; not to the Assistant Surveyor of a Board formed under § 18 of that Act. (27 L. J., M. C., 307; E. B. & E., 615; 31 L. T., (O. S.), 199.)

69. 1836. *Addison v. Round*. "Highway Act, 1773," § 48 [Repealed]—Held that Churchwardens and Overseers, as representing the Parish, had not such a property in the books of an out-going Surveyor as to entitle them to maintain Trover—The only remedy was that provided by the Statute, viz., a penalty for non-compliance with the directions of the Statute as to the delivery of the books. (5 L. J., K. B., 152; 4 A. & E. 799; 6 N. & M., 422.)

70. 1862. *Cave v. Mills*. A Turnpike Surveyor for several years knowingly omitted in his accounts liabilities duly incurred by him—The Trustees settled each year the accounts of that year, except the last—Held that the Surveyor could not recover any omitted sums except those which belonged to the last year. (31 L. J., Ex., 265; 7 H. & N., 913; 6 L. T., 650.)

71. 1861. *Champ v. Stokes*. Attorney's Bill of Costs against a Highway Surveyor in respect of certain Highway business—Held that the heading "To the Surveyor," &c., was a sufficient delivery of the Bill within the "Attorneys and Solicitors Act, 1843," § 37. (30 L. J., Ex., 242; 6 H. & N., 683; 4 L. T., 334.)

72. 1830. *Hensdebourck v. Langton*. "Highway Act, 1773," § 48 [Repealed]—Held that an incoming Surveyor could not maintain an Action against his predecessor for balance in hand, until the accounts had been allowed or disallowed in manner directed by the Act. (8 L. J., (O. S.), M. C., 134; 10 B. & C., 546.) (8 C. at Nisi prius; 3 C. & P., 566; 1 Mood. & Mal., 402, n.)

73. 1851. *Kilham v. Collier*. "Highway Act, 1835," § 103—Law Expenses incurred by Surveyor without sanction of Vestry—Consequent refusal of Vestry to pass his accounts—Offer by him to hand over to new Surveyor a sum of money if opposition were withdrawn—Agreement to this effect endorsed on the accounts, and opposition accordingly withdrawn—The money remaining unpaid, Action in County Court by the new Surveyor, who was one of those who signed the agreement—Held that there was no contract with the plaintiff in particular, and that the other Vestrymen should have been joined as co-plaintiffs, and that if the money was to be treated as a balance due from one Surveyor to another, the procedure prescribed in "Highway Act, 1835," § 103, namely, Summary process should have been resorted to—*Semble*, that the arrangement with the Vestry was

illegal as against public policy. (21 L. J., Q. B., 65; [Collier v. Kilham] 15 Jur., 1175; 18 L. T., (O. S.), 121.)

74. 1835. *Liddard v. Holmes*. Agreement by A, one of 2 Surveyors, to hand over to B, the other, the Rate-Book on promise that A should be re-imbursed out of the next Rate money advanced by him for Highway purposes—Money was afterwards collected by B, but B spent it all in repair of roads and refused to repay A—Held that A was entitled to sue B for the amount due as on an account stated. (2 C. M. & E., 586; 1 Tyr. & G., 9.)

75. 1857. *Reg. v. Leicestershire JJ.* "Highway Act, 1835," § 44—Accounts of Surveyor allowed in part, disallowed as to the remainder, by the Justices at Special Sessions—Held that no appeal either by Parishioners or by Surveyor lay to the Quarter Sessions. (8 E. & B., 557; 21 J. P. 772.)

76. 1858. *Reg. v. Padwick*. "Highway Act, 1835," § 105: 12 & 13 Vict., c. 45, §§ 5-6—Appeal to Special Sessions against an allowance of accounts of Surveyors—Appeal dismissed—Thereupon an Appeal to Quarter Sessions—That Appeal also dismissed for want of jurisdiction—Order of Quarter Sessions that Appellant should pay costs held good under 12 & 13 Vict., c. 45. (27 L. J., M. C., 113; 8 E. & B., 704; [R. v. Packwick] 30 L. T., (O. S.), 255.)

77. 1841. *Reg. v. Yorkshire, W. R., JJ.* "Highway Act, 1835," § 44—No Appeal lies to Quarter Sessions against the allowance of Surveyor's accounts at Special Sessions—Nor will the Court grant a *Mandamus* to Petty Sessions to re-examine accounts once passed, although improper items have been passed, and the accounts were not fully investigated because it was supposed that an appeal lay to Quarter Sessions and that the case involved important questions of law. (10 L. J., M. C., 137; 1 Q. B., 624; 1 G. & D., 108.)

78. 1834. *Row v. Fowler*. "Highway Act, 1773," [Repealed]—Law Expenses *bona fide* incurred by Surveyors and allowed by Justices, notwithstanding opposition of inhabitants although not agreed to or allowed before charged—Such allowances held good. (1 A. & E., 836; 3 N. & M., 826.)

79. 1833. *Row v. Lewis*. Where a Surveyor had improperly allowed the time for producing his accounts and getting them passed, to elapse, a *Mandamus* was granted to compel their production. (1 Dowl., P. C., 530.)

80. 1862. *Taylor v. Stansfield*. Highway accounts—Balance due to Surveyors on an old account repaid out of the Rates after the lapse of 4 years—Held that the payment ought to be disallowed. (6 L. T., 26.)

CHAPTER IV.

CREATION OF HIGHWAYS.

(1.) PROOFS GENERALLY OF A WAY
BEING A HIGHWAY.

78. 1678. *Absor v. French*. If a highway be foundrous a passenger may go over the next adjoining land without being guilty of a trespass. (2 Shower, 28.)

79. 1876. *Bailey v. Jamieson*. A Way ceases to be a "Public Highway" where access to it at both ends becomes impossible by reason of Ways leading to it having been legally stopped up. (L.R., 1 C.P.D., 329; 34 L. T., 62.)

80. 1852. *Bateman v. Bluck*. A *coul-de-sac* may be a public highway. (21 L. J., Q. B., 406; 18 Q. B., 870; 19 L. T., (O. S.), 95.)

81. 1815. *Bullard v. Harrison*. Though a man may deviate on to adjoining land if a public highway is impassable yet this rule does not apply to the case of a private way which becomes impassable—In this case, therefore, the person who deviates becomes a trespasser. (4 Maule & S., 387.)

82. 1853. *Campbell v. Lang*. A public right of way means a right to the public to pass from one public place to another public place—*Semble* that the *terminus* of a public way need not itself be a public place, if it lead to a public place. (1 Macq., H. L. C., 451.)

83. 1868. *Cook v. Bath, Mayor*. Right of way to back of house—Non-user for many years followed by a resumption of user—Proposal of Corporation to build so as to obstruct the way—Conflicting evidence as to way being public or private—Where a plaintiff suffers a particular injury from the obstruction of a public way an Injunction will lie, and the Attorney-General need not be a party—Circumstances which will amount to an abandonment of an easement, considered. (L. R., 6 Eq., 177; 18 L. T., 123.)

84. 1839. *Cottrell v. Starkey*. A foot passenger has a right to cross a road, and the driver of a carriage is liable to an Action if he does not take care to avoid driving against him—It is no defence that such driver cannot pull up in time because his reins break, for he is bound to have proper tackle—The rule as to a carriage being on its proper side of the road does not apply where a carriage and a foot passenger are concerned; for as regards foot passengers a carriage may go on either side of the road—In an Action of Trespass for driving a carriage against the plaintiff the defence of inevitable accident must be specially pleaded. (8 C. & P., 691.)

85. 1863. *Coventry (Earl of) v. Willes*. Declaration in Trespass for entering certain lands—Plea, public highway available during horse races, with an allegation of common right to go and witness the races—Other similar pleas—Pleas held bad—A customary right can only be applicable to certain inhabitants of the district where the custom is alleged to exist, and cannot be claimed for the public at large—*Fitch v. Rawling* followed. (9 L. T., 384; 12 W. R., 127.)

86. 1873. *Cubitt v. Maass*. Land set out under an Inclosure Act for a highway—Proposed line of way fenced but no way ever formed—Held that the mere allotment of a piece of land for a highway did not make it such, when no steps had been taken to comply

with the formalities prescribed by Parliament—There being no evidence of user, the adjacent owner, holding by adverse possession for more than 20 years, held entitled to the land. (42 L. J., C. P., 278; L. R., 8 C. P., 704; 29 L. T., 244.)

87. 1870. *Greenwich B. W. v. Maudsley*. Right of way along a Sea Wall—Dedication may be presumed so far as it is not inconsistent with the purpose of the Wall. (39 L. J., Q. B., 205; L. R., 5 Q. B., 397; 23 L. T., 121; 35 J. P., 8.)

88. 1859. *Harper v. Forbes*. The widening of a road by adding to it a strip of consecrated ground cut off from a Churchyard held *ultra vires*—No Ecclesiastical Court can authorise any portion of ground that has been once consecrated to be devoted to secular uses. (5 Jur., (N. S.), 275.)

89. 1860. *Hutton v. Hamboro*. *Per* Cockburn, J. A public right of way over waste land, or between two points, extends to every part of the land, access to, or along which there is the right of way—A private right is not necessarily so extensive, but may be confined within certain limits. (2 F. & F., 218.) [The meaning of this decision seems to be that in the case of a public right of way the right extends over all the land, so that, for instance, if one path becomes impassable the public may make another, but that such an extended power does not of necessity inhere where there is only a private right of way.]

90. 1859. *Ilkington v. Montgomery*. "Public Health Act, 1848," § 69—Street dedicated to the public—Long user by the public—Owners held not liable for paving expenses on the ground that the facts showed a dedication to and adoption by the public. (2 L. T., 726; 24 J. P., 101.)

91. 1858. *Pipe v. Fulcher*. Action of Trespass—Old map, which had been used by deceased and present Stewards for defining copyholds, put in by defendant to prove a highway held not admissible evidence as amounting to a declaration by a deceased person as to a public right, inasmuch as it had been used only for another purpose, and did not describe the way as a highway. (28 L. J., Q. B., 12; 1 E. & E., 111; 32 L. T., (O. S.), 105.)

92. 1801. *Reed v. Jackson*. Action for Trespass—Record of Verdict negating claim of public right of way held admissible evidence in Trespass against another defendant who sought to justify under the same right—Reputation would be evidence as to a public right, *à fortiori* a verdict would be evidence—Reputation is evidence in a claim of public but not of private right. (1 East., 355.)

93. 1853. *Reg. v. Aldborough*. Though "Public Highway" *prima facie* imports a road for carriages as well as for other purposes, it may mean simply a "Public Bridle-way"—User for 89 years as a bridle-way held decisive evidence that it was no more than such. (17 J. P., 648.)

94. 1837. *Reg. v. Bliss*. Evidence of Highway—Road, public or private?—Evidence that a deceased person had planted a willow adjoining the road, saying that it would mark the boundary, held not admissible evidence either to show reputation of the road being public, or as a statement accompanying an act, or as the admission of an occupier against his own interest since he could not bind the interest of his landlord—

Hearsay evidence must only be received as showing general reputation and must not touch particular facts. (7 L. J., Q. B., 4; 7 A. & E., 550; 2 N. & P., 464.)

95. 1875. *Reg. v. Burney*. A public footpath having been blocked up at one end by works executed under the authority of Parliament had ceased to be of public utility—Indictment for misdemeanour in obstructing it—Conviction—That the way had become of little utility might be a reason for mitigating the punishment inflicted on the guilty party, but it was no justification for the act of obstruction—*A out-de-sac* may be a public highway. (31 L. T., 828.)

96. 1850. *Reg. v. Lordsmere Inhabitants*. Turnpike road partly formed by turning to account an existing road—Portion of road out of repair during continuance of Turnpike Act—Indictment of Parish for non-repair—Held that the road was a common highway in spite of its temporary Turnpike character, and that the Parish was liable. (19 L. J., M. C., 215; 15 Q. B., 689; 4 New Sess. Cas., 205.)

97. 1825. *Rea v. Lyon*. Arched carriage-way—A way is none the less a public carriage-way because only vehicles of limited dimensions can traverse it—Where a way has been recognised in a Statute as public it is not necessary that a Parish should adopt it, in order to make it a public way. (5 D. & B., 497; Ryan and M., 151.)

98. ? *Rea v. St. James, Taunton, Inhabitants*. Where there once has been a public highway no length of time during which it may not have been used will prevent the public resuming the right, if they think proper [unless it has been formally stopped]. (2 Selw., N.P., 13th Ed., 1264.)

99. 1819. *Rea v. Severn & Wye Railway Co.* Railway or Tramroad made under a Statute whereby it was provided that it should be available to public generally, held to be a highway—On its being pulled up, *Mandamus* granted for its restoration. (2 B. & Ald., 646.)

100. 1670. *Rea v. Staughton*. If one inclose land on one side, which hath been anciently inclosed of the other side, he ought to repair all the way, but if there be not such an ancient inclosure of the other side, he ought to repair but half that way. (1 Hawk., P. C., c. 32, § 7; 2 Keble, 665; 2 Saunders, 157.)

101. 1852. *St. John, Walbrook, Rector v. Parishioners*. No Judge has power by the general law to grant a Faculty for the surrender of part of a Churchyard for widening a highway even though consent be given by all parties interested, [the reason apparently being that a sentence of consecration is definitive.] (2 Robertson, Ecc., 515.)

102. 1874. *St. Mary, Islington, Vestry v. Barrett*. Paving expenses—Insufficient evidence of dedication—The expression "New Street" in the "Metropolis Local Management Act, 1862," § 112, is not confined to streets dedicated to the public, and liability to pave is imposed by the "Metropolis Local Management Act, 1855," § 105. (43 L. J., M. C., 85; L. R., 9 Q. B., 278; 30 L. T., 11; 38 J. P., 198.)

102a. 1878. *St. Mary, Whitechapel, In re*. Application for faculty to authorise part of a Churchyard being given up to widen a highway—Application granted on condition that tombstones and human remains were carefully removed; ground taken to revert to Churchyard if hereafter not wanted for the highway. (*Times*, July 30, 1878.)

103. 1820. *Sutcliffe v. Greenwood*. A highway may be created by Act of Parliament, and therefore a plea of a right to pass at pleasure along a public highway "paying a certain toll" is not inconsistent or contradictory. (8 Price, 535.)

104. 1781. *Taylor v. Whitehead*. The general right to pass across adjoining land when a way is foundrous only applies in the case of public highways—Therefore where a way over which there existed a

private right to pass became impassable owing to a flood the defendant was held liable to an action for Trespass for going over private lands adjoining. (2 Dougl., 745.)

105. 1857. *Thompson v. West Somerset Mineral Railway Co.* A highway is a road leading from one town to another with a foot and carriage way, and the public are entitled to have it kept free from impediments; and therefore a pier across which ropes and chains are placed as of right for the mooring of vessels cannot be considered a highway. (29 L. T., (O. S.), 7; 21 J. P., 278.)

106. 1836. *Walker v. Montagu*. Public footway through a Churchyard—*Per Dr. Lushington*:—"I apprehend that neither the Rector nor the Churchwardens can make a new path without a Faculty from this [Consistory] Court. In strictness that is by Law required." (1 Curt., 253, at p. 260.)

107. 1838. *Williams v. Wilcox*. *Per Lord Denman, C.J.*:—"It cannot be disputed that the channel of a public navigable river is a King's Highway, and is properly so described." (8 A. & E., 314 at p. 329.)

108. 1875. *Wimbledon and Putney Commons Conservators v. Dixon*. There may be a right of way across a Common without any one track in particular being adhered to, provided that the *terminus a quo* and the *terminus ad quem* are known. (45 L. J., Ch., 353; L. R., 1 Ch. D., 362; 33 L. T., 679; 40 J. P., 102.)

109. 1845. *Wood v. Wedgewood*. A declaration in Trespass contained a Count for trespass in two closes and a Count for trespass "in other parts" of the same closes—Plea of Justification under one public Right of Way over the two Closes held good in answer to both Counts. (14 L. J., C. P., 132; 1 C. B., 273.)

(2.) DEDICATION OF HIGHWAYS.

(i.) Generally.

110. 1806. *Allen v. Ormond*. Proof of a *terminus ad quem* being a public highway is afforded by proving a public footway. (8 East, 4.)

111. 1789. *Aspindall v. Brown*. In pleading "public highway" it is sufficient to allege the fact, without showing how it became so, or that it has been so from time immemorial. (3 T. R., 265.)

112. 1808. *Ballard v. Dyson*. Evidence of a prescriptive right of way for all manner of carriages does not necessarily prove a right of way for all manner of cattle—But it is some evidence of a drift-way—A carriage-way will comprehend a horse-way, but not necessarily a drift-way—The extent of usage is evidence of a right only commensurate with the user. (1 Taunt., 279.)

113. 1838. *Barraclough v. Johnson*. In determining whether a way has or has not been dedicated to the public the proprietor's intention must be considered—If it appear only that he has suffered a continual user that fact may prove a dedication; but such proof may be rebutted by evidence of acts showing that he contemplated only a licence revocable in a particular event—Documentary evidence as to reputation admitted. (7 L. J., Q. B., 172; 8 A. & E., 99; 3 N. & P., 233.)

114. 1833. *British Museum Trustees v. Finnis*. If a person allows the public to pass over his land continuously, user for a very few years would establish a right of way; if it is not his intention to dedicate he must do some act, such as, for instance, shut it up one day in a year, to show that he intends to give a licence only—If there is an old way near a person's land, and by reason of the decay of fences the public come on the land, no dedication is to be presumed. (5 C. & P., 460.)

115. 1862. *Chapman v. Cripps*. The mere use by people of tracks through a wood where they are free to

wander as they please is not enough to show dedication of such tracks as public foot-ways. (2 F. & F., 864.)

116. 1825. *Harper v. Charlemorth*. Public foot-way over Crown land extinguished by an Inclosure Act nevertheless used by the public for 20 years afterwards—Held no evidence of dedication as there was no proof that the user was with the knowledge or consent of the Crown. (3 L. J., (O. S.), K. B., 265; 4 B. & C., 574; 6 D. & R., 572.)

117. 1735. *Lade v. Shepherd*. In dedicating land for a highway the landowner only gives a right of passage—There is no transfer of the property of the soil. (2 Str., 1004.)

118. 1862. *Mildred v. Weaver*. A right of way may be obtained by user for pleasure purposes only—Non-repair by Parish is cogent but not conclusive evidence against user over private property being a Highway—Proof of general user is strong evidence of dedication, but it is to be considered with reference to gates, repairs, permission, and the like—Payment for user is cogent but not conclusive evidence against the right. (3 F. & F., 30; 6 L. T., 225.)

119. 1824. *Moore v. Ramson*. A way over the lands of another can only be lawfully used, in the first instance with his consent, expressed or implied—A party using the way without such consent would be a wrong-doer—But when such a user, without interruption, has continued for 20 years, the owner's consent is not only implied during that period, but a grant of the easement is presumed to have taken place before the user commenced. (3 B. & C., 332, at p. 339; 5 D. & R., 234, at p. 239.)

120. 1848. *Reg. v. East Mark Tything*. Waste land of a manor set out as a private road but used by the public—If a road has been used by the public for many years dedication by the owner may be presumed; it is not material to inquire who was the owner or whether he intended to dedicate—The Crown equally with a private owner may be presumed to dedicate. (17 L. J., Q. B., 177; 11 Q. B., 877; 3 Cox, C. C., 60; 11 L. T., (O. S.), 63.)

121. 1862. *Reg. v. Harehurst Parish* (1.) Dedication for a limited purpose—Road leading to a Private Park—Though the road had been repaired by the Parish from time immemorial, held that the evidence of dedication and user was insufficient, and that the Parish was not bound to repair the road. (7 L. T., 268; 11 W. R., 9.)

122. 1863. *Reg. v. Horley Inhabitants*. Occupation road set out under an Inclosure Act—Road a soft road but entirely free to the Public, and repaired on 2 occasions by Public Subscription—Held that there had been sufficient dedication to render the Parish liable to repair it, although there never had been any formal adoption. (8 L. T., 382; 11 W. R., 433.)

123. 1821. *Row v. St. Benedict Inhabitants*. Road set out under a Local Act for use of certain persons only, used by the Public for many years—Held that there was no sufficient dedication. [This case was also an authority for the necessity of acquiescence in dedication on the part of a Parish, in order that it might be liable to repair, but as regards this point the case has been overruled.] (4 B. & Ald., 447.)

124. 1790. *Rouse v. Bardin*. In pleading "Public highway," it is not necessary to specify any *termini*; but if stated they must be proved. (1 H. Bl., 351.)

125. 1862. *Schwinge v. Dowell*. Evidence that in a place of resort for pleasure, such as a wood, people have moved about whither they pleased, there being no definite trackway in any particular direction, but merely temporary tracks not passable in wet weather and varying in every season and never shown to be repaired, is not evidence of a public highway or of a public right of resort for air, or of a prescriptive right of way. (2 F. & F., 845.)

126. 1862. *Willes v. Wallington*. "Public Health

Act, 1848," § 61—Local Acts—Question as to whether on the facts, a certain street was or was not a "Highway." (32 L. J., C. P., 86; 13 C. B., (N. S.), 865; *In the Court below*, [Wallington v. White] 4 L. T., 290.)

127. 1822. *Wood v. Vass*. Land leased for 99 years—User of a way over it by the Public for most of this time—Lighted and paved under authority of an Act which mentioned it as a "street"—Subsequent inclosure by owner—Held that the Jury was justified in finding no right of way—There can be no dedication by tenants for a term, or by anyone, except the owner in fee. (5 B. & Ald., 454; 1 D. & R., 20.)

128. 1854. *Young v. Cuthbertson*. Although a public way may pass through private property, it must have at each end a public *terminus*, which may, however, be a *coul-de-sac*—A mere private place, not admitting of a passage through or beyond it cannot form the *terminus* of a public way—Non-user of a right of way may be evidence against the existence of such right, but *quære* whether it can be evidence to show that the right has been lost. (1 Macq., H. L. C., 455.)

(ii.) Acquiescence in, and Presumptions as to, Dedication.

129. 1832. *Baxter v. Taylor*. Land under lease—Way claimed as of right—Action by reversioner against a trespasser held not maintainable, there being no necessary injury to the reversion—Acquiescence in acts of Trespass would not, under the circumstance of there being a lease, be evidence against the reversioner of dedication. (2 L. J., K. B., 65; 4 B. & Ad., 72; 1 N. & M., 11.)

130. 1865. *Bermondsey Vestry v. Brown*. Dedication to a particular Parish cannot be presumed; dedication from uninterrupted use can only be presumed in favour of the Public generally—During the continuance of a lease no intention to dedicate on the part of the reversioner in fee is to be presumed. (L. R., 1 Eq., 204; 35 Bea., 226; 13 L. T., 574.)

131. 1836. *Davies v. Stephens*. The user of a way during occupation by tenants does not bind the landlord, unless he was aware of it, but if the user extends over a long period of time it may be presumed that the landlord was aware of it—A plea of a "foot-way" is supported by proof of a carriage-way, as "a carriage-way always includes a foot-way"—A gate being kept across a way is not conclusive that it is not a public way, for the way may have been dedicated with a reservation of a right to keep a gate across it, in order to prevent cattle from straying. (7 C. & P., 570.)

132. 1873. *Hamilton v. St. George's, Hanover Square, Vestry*. The owner of a cellar over which there exists a paved public foot-way is not bound to keep the foot-way in repair if the cellar existed before the foot-way was dedicated. (Metropolis.) (43 L. J., M. C., 41; L. R., 9 Q. B., 42; 29 L. T., 428; 38 J. P., 405.)

133. 1859. *Holden v. Tilley*. Action for Trespass—Plea, immemorial right of way, and user for 40 and 20 years respectively—About 19 years previously to Action a statute had extinguished all ways not set out in an Inclosure Award—Way in question not so set out—Held that it could not be presumed from the user that the Award was otherwise than properly made, and less than 20 years having elapsed since the Award, no right had been gained under the "Prescription Act, 1832," 2 & 3 Will. IV., c. 71, § 2. (1 F. & F., 650.)

134. 1826. *Jarvis v. Dean*. Persons had been for some years in the habit of passing along a new unpaved, unfinished street, terminating in fields where other houses were built—A Jury having found a dedication of it, the Court refused a new trial, which was moved for on the grounds that the evidence did not disclose adequate proof of dedication. (3 Bing., 447; 11 Moore, 354.)

135. 1872. Pryor v. Pryor. Land let on building leases for 60 years—Street thereon used by the Public by consent for more than 20 years—Held that an intention to dedicate must be inferred from the facts. (26 L. T., 758.)

136. 1857. Race v. Ward. "Inclosure Act, 1801," §§ 11 and 14—Custom to take water from a well—Highway to well—Award inclosing land where well was situated and extinguishing ways, held not to operate as an extinction of the right to use the well—The Public having since the Inclosure been in the habit of crossing the plaintiff's close to get the water, *Semble*, that the ancient right of access was not extinguished. (26 L. J., Q. B., 133; 7 E. & B., 384; 28 L. T., (O. S.), 288.)

137. 1860. Reg. v. Brailford Inhabitants. Indictment for non-repair—Misdirection—New trial—The fact that a road is impassable in winter, is no presumption against its dedication to the Public. (2 L. T., 508.)

138. 1859. Reg. v. Broke. In an Indictment for stopping up a highway, removed by *Certiorari*, and tried at the Assizes, Counsel for the defendant may sum up his evidence at the close of his case as in a civil Action—If a particular class of persons use a way, and the owner of the land does not communicate to them his reasons for letting them pass to the exclusion of all others, they must be deemed to pass as by right, and their user for 20 years will suffice to establish a right for the public generally. (1 F. & F., 314.)

139. 1848. Reg. v. Chorley. Indictment for obstruction of foot-way by driving a carriage along it—Claim of private right of carriage-way—Alleged Waiver—Proof that before the public foot-way existed the Defendant's predecessors in title were entitled to a carriage-way over the *locus in quo*—Contention on the part of the Crown that public user inconsistent with the assertion of the private easement had determined it—Direction by the Judge that no interruption for less than 20 years would destroy the private right held a mis-direction—The period is only one element from which the grantee's intention to retain or abandon his right may be inferred, and the sufficiency or otherwise of the period in any particular case must depend on all the accompanying circumstances, including the adverse acts acquiesced in by him. (12 Q. B., 515; 3 Cox, C. C., 262.)

140. 1855. Reg. v. Petrie. Highway—User by the Public for some time is *prima facie* evidence of dedication: it is not necessary to inquire from whom the dedication first proceeded. (24 L. J., Q. B., 167; 4 E. & B., 737; 24 L. T., (O. S.), 271.)

141. 1814. Rez v. Barr. Where a way is used for a great number of years over a close in the possession of a succession of tenants, the privy of the landlord and dedication by him is to be presumed, although he was never in actual possession or personally near the spot—Knowledge of the user and acquiescence by the steward is knowledge and acquiescence by the landlord. (4 Camp., 16.)

142. 1808. Rez v. Lloyd. If the owner of the soil throws open a passage and neither marks by any visible distinction that he means to preserve his rights, nor excludes by positive prohibition persons from passing, intention to dedicate is to be presumed—Although the passage may have been originally intended only for the private convenience of particular houses, the Public are not to be excluded after long and uninterrupted user—A way may be a highway although very circuitous. (1 Camp., 260.)

143. 1790. Rugby Charity Trustees v. Merryweather. Dedication may be presumed from user for a shorter time than is necessary to establish a right of possession to the land—User by the Public for 8 years and 6 years respectively held to justify a presumption of dedication. (11 East, 375, n.)

High. P

144. 1855. Stone v. Jackson. Action for negligence in leaving a cellar unfenced close to a public foot-way—Evidence that many persons were in the habit of crossing near the spot, as a short cut to another road, but that persons were often turned back by the owner—Held that there was no proof of the way being public. (16 C. B., 199.)

145. 1860. Thomas v. Williams. Highway—User—Evidence that a Local Board had repaired the street, and had put up notices under the "Public Health Act, 1848," § 70, for its adoption, held evidence of dedication sufficient to sustain a conviction for injuring the street. (24 J. P., 821.)

(iii.) Limited Dedication: Bars and Gates.

146. 1871. Arnold v. Blaker. Highway—Foot-path across an arable field—Held on the evidence that the Surveyors were not entitled so to repair the foot-path that it could not be ploughed up, there appearing to have been only a limited dedication, subject to a right to plough. (40 L. J., Q. B., 185; L. R., 6 Q. B., 433.)

147. 1873. Arnold v. Holbrook. Highway—Foot-path across an arable field—Held that when a footpath was lawfully ploughed up and trespassing took place, to prevent which the occupier puts up hurdles, the Public must neither go off the line nor pull down the hurdles—The fact that the path became impassable after being lawfully ploughed conferred no right on the Public, in the absence of prescriptive right, to deviate. (42 L. J., Q. B., 80; L. R., 8 Q. B., 96; 28 L. T., 23; 37 J. P., 229.)

148. 1878. A. G. v. Bi-phosphated Guano Co. Footway diverted, subject to an agreement between the Local Authority and an intending lessee that the latter should form a new road in substitution—Lease granted for 80 years, the demise being "subject to existing rights of way"—The new road shown on plan annexed, but marked "private road"—Subsequent assignments of the lease, of which the present defendants eventually became sub-lessees and they obstructed the way—Held that there had been no sufficient dedication to bind purchasers for value without notice. (W. N., 1878, p. 50.)

149. 1845. Bateman v. Burge. If there be a public foot-way with a stile across it of a certain height no one has a right to replace the stile by a gate of greater height, and the former existence of gates in other parts of the same way will be no defence—If there be an obstruction of a public way, and any person receives a special injury from it, he may maintain an Action. (6 C. & P., 391.)

150. 1869. Brackenborough v. Thorsby. "Highway Act, 1835," § 72—A footway across a field may be a "Highway," and a conviction will lie for injuring (in this case, ploughing up) the same. (19 L. T., 692.)

151. 1840. Brownlow v. Tomkinson. Per Lord Denman, C. J.:—A road may be an occupation way at the same time that it is a highway; by the owner of the soil making it the latter it does not cease to be the former so as to deprive of his rights the party entitled to the private way. (1 M. & G., 484, at p. 487; also reported generally, 1 Scott, N. B., 426.)

152. 1862. Cooper v. Walker. Obstruction of Highway—Projecting stone steps—Held that though in fact an obstruction, they were no obstruction in Law, it being a fair presumption that the street was dedicated subject to the right to continue the inconvenience. (31 L. J., Q. B., 212; 2 B. & S., 770; 6 L. T., 711.)

153. 1855. Cornwall v. Metropolitan Commissioners of Sewers. Ancient tidal sewer running along a highway—Held that the right to the highway was subject

to the sewer, and that the owner of the sewer was not bound to fence. (10 Ex., 771; 3 C. L. R., 417; 19 J. P., 313.)

154. 1861. *Daves v. Hawkins*. Ancient highway illegally obstructed and new road substituted—The new road having been used for more than 20 years the old road was restored and the new one closed by the landowner—Held that he was justified in stopping it up, there being no evidence of dedication—There can be no dedication of a way for a limited time, certain or uncertain; if dedicated at all it must be in perpetuity—Nor can the Public by non-user release their rights. (29 L. J., C. P., 343; 8 C. B., (N. S.), 848; 4 L. T., 288.)

155. 1845. *Ferrand v. Milligan*. Action of Trespass for breaking open gates, &c.—Plea, public highway—Proof of the same, that the Township Surveyor had repaired the road—Replication, that this officer had executed some repairs by agreement with the landowner's steward and on promise of repayment—Held that the agreement was rightly admitted as evidence to explain why the Surveyor had interfered with a road if it was not a public highway. (15 L. J., Q. B., 103; 7 Q. B., 730.)

156. 1862. *Fisher v. Promise*. Obstruction of highway—Projecting Cellar-flap—If land with an obstruction on it is dedicated to the Public, such dedication is subject to the risk arising from such obstruction. (31 L. J., Q. B., 212; 2 B. & S., 770; 6 L. T., 711.)

157. 1828. *Fitzpatrick v. Robinson*. A user by the Public of an open strand or waste does not necessarily imply that the owner of the soil has abandoned his rights and given it to the Public—Although dedication may be partial or limited as to the sort of way (as to a horse-way, &c.) yet there cannot be a qualified dedication subject to a power of resumption; for that would be the reservation of a right inconsistent with dedication to the public. (1 Hudson & Brook, 585.)

158. 1808. *Lethbridge v. Winter*. Footpath stopped by a gate—Gate removed for 12 years and access of the Public permitted—New gate then erected—Held that the owner had not lost his right to stop the path by means of a gate, and that there was no sufficient proof of dedication. (1 Camp., N. P., 262, n.)

159. 1809. *Mercer v. Woodgate*. Highway—Footpath through a ploughed field—Whether or not it is lawful to plough up a highway depends on the facts of the case—There may be a dedication of a right of way subject to a right to plough. (39 L. J., M. C., 21; L. R., 5 Q. B., 26; 10 B. & S., 833; 21 L. T., 458.)

160. 1861. *Morant v. Chamberlain*. A highway may be dedicated subject to a pre-existing right of user by adjoining occupiers for the deposit of goods on parts thereof. (30 L. J., Ex., 299; 6 H. & N., 541.)

161. 1843. *Poolo v. Huskinson*. A way may be dedicated for a limited purpose, e.g., as a foot-way only, but there cannot be a dedication to a limited portion of the Public, e.g., the inhabitants of one Parish in particular—Such a partial dedication is of no effect as a dedication—To constitute dedication there must be an intention to dedicate; of this, user is evidence, but such evidence may be rebutted by contrary evidence of interruption by owner—Notwithstanding an Award by Inclosure Commissioners of land for a public bridle-way and drift-way and private carriage-way the ownership of the soil still remains in the Lord of the Manor. (11 M. & W., 827.)

162. 1851. *Reg. v. Charlemorth*. Turnpike road crossed at various places by Colliery tramways—Held that the tramways were indictable as obstructions to the highway, notwithstanding that the Turnpike Trustees had power to grant licences for those tramways, which, however, they had not done in the present case—Though a landowner may dedicate a road with a reservation, a claim to cross it anywhere with tram-

rails is too large a reservation to be sanctioned without some express agreement. (20 L. J., M. C., 181; 16 Q. B., 1012; 5 Cox, C. C., 174; 17 L. T., (O. S.), 91.)

163. 1731. *Re v. Hudson*. Common foot-way prescribed for the duration of a lease of 56 years—Defendant stopping it up within 4 years of the expiration of the lease held not guilty of stopping up a public way—Where the origin of a way is accounted for, the prescription is destroyed. (2 Str., 909.)

164. 1863. *Robbins v. Jones*. Defective flagging and grating—Dedication to the public of a highway with a feature which afterwards became a dangerous nuisance—No Action will thereafter lie against the dedicatior for an injury caused by such nuisance—The dedication must be treated as accepted by the Public, subject to the inconvenience or risk, if any. (33 L. J., C. P., 1; 15 C. B., (N. S.), 221; 9 L. T., 523.)

165. 1808. *Roberts v. Karr*. The erection of a bar, although it may have been afterwards knocked down, rebuts the presumption of a dedication to the Public. (1 Camp., 262, N.)

166. 1862. *Selby v. Crystal Palace Gas Co.* Private road through an estate cut up into building-plots—Covenant by Freeholder that the occupiers might use the road as if it were public—Road broken up by Gas Company at the invitation of some of the occupiers, but without the consent of the Freeholder—Bill filed by him against the Company for an Injunction—Bill dismissed—Occupation roads through an estate formed for the convenience of the tenants do not thereby become dedicated to the public as of course. (31 L. J., Ch., 595; 4 De G. F. & J., 246; 30 Bea., 606; 6 L. T., 790.)

167. 1827. *Stafford (Marquis of) v. Coyney*. Road through a private estate permitted to be used by the Public for all purposes save the carriage of coals—Held that this was either a limited dedication or no dedication at all, but only a revocable licence, and that a person carrying coals along the road after notice not to do so was a trespasser—There may be a limited dedication. (5 L. J., K. B., 285; 7 B. & C., 257.)

168. 1813. *Woodyer v. Hadden*. *Per* Heath, J.:—"Until the owner has shown some intention of dedicating the soil to the Public his right continues of putting up a bar and excluding them, otherwise the building of every house and laying out a way to it would establish a public way."—(5 Taunt., 125.)

(iv.) In Accordance with the "Highway Acts."

169. 1874. *Reg. v. Bagge*. "Highway Act, 1835," § 23—Proposed by landowner to dedicate new road—Acceptance by the Parish is a condition precedent to dedication—A meeting informally convened refused to accept the road—*Mandamus* to compel Justices to certify under § 23 refused—*Semble*, that a *Mandamus* would lie to compel the Surveyors to summon a proper meeting, even after the 3 months mentioned in the notice has expired. (44 L. J., M. C., 45; [Reg. v. Norfolk, JJ.] 31 L. T., 585.)

170. 1858. *Reg. v. Derbyshire, JJ.* "Highway Act, 1835," § 23—Decision of Vestry that a way proposed to be dedicated was not of sufficient utility to justify its repair by the Parish—Order by Justices in Special Sessions to the like effect—Appeal by landowners to Quarter Sessions—Decision of Quarter Sessions that they had no jurisdiction—*Mandamus* granted to hear the appeal. (27 L. J., M. C., 189; E. B. & E., 69; 31 L. T., (O. S.), 80.)

171. 1861. *Reg. v. Surrey JJ.* "Highway Act, 1835," § 23—Refusal of Justices to grant a Certificate on the ground that a road, part of which passing through a tunnel under a railway was not of the required width, was to be treated as one road; and a part was not of the requisite width—Held that the Justices were right in their decision. (3 L. T., 808.)

172. 1857. *Reg. v. Thomas*. "Highway Act, 1835," § 23—Road made by Turnpike Trustees under a Temporary Act—Part of the line of road never completed—Road used by the Public and repaired by the Parish both before and after the expiration of the Act—Held that there was evidence of dedication and adoption, and that though the fact that the road was originally made under a Turnpike Act might explain away such evidence in fact, it did not conclusively in Law rebut it—§ 23 does not apply to a road made by Turnpike Trustees, and therefore the absence of a Certificate by 2 Justices, &c., did not prevent the road from becoming compulsorily repairable by the Parish, on a dedication by the owners of the soil at the expiration of the Turnpike Act. (7 E. & B., 399; 28 L. T., (O. S.), 303; 5 W. R., 321.)

173. 1850. *Roberts v. Hunt*. "Highway Act, 1835," § 23—A road intended to be dedicated, and actually used, but as to which the requisite formalities for dedication under § 23 have not been taken may nevertheless be a highway in other respects—Action for obstructing such a road, whereby an accident happened to the plaintiff, held maintainable. (15 Q. B., 17; 15 L. T., (O. S.), 66.)

174. 1840. *Reg. v. Westmark Tithing*. "Highway Act, 1835," § 23—This section is not retrospective; it applies to roads made but not completely dedicated by user or otherwise at the passing of the Act—An Indictment for non-repair is not supported by proof of a highway having been extinguished as such, 60 years previously, by an Inclosure Act, but since used by the Public and repaired by the district sought to be charged. (2 Moo. & Rob., 305.)

(3.) RIGHTS AS TO SOIL ADJACENT TO HIGHWAYS.

175. 1768. *Anon.* (Lofft, 358.) The presumption that waste land adjoining a road belongs to the adjacent owners and not to the Lord of the Manor may be rebutted by evidence of acts of ownership on the part of the Lord. (Lofft, 358.)

176. 1861. *Berridge v. Ward*. Where a piece of land adjoining a highway is conveyed by general words the presumption of Law is that the soil *usque ad medium filum viæ* passes by the conveyance, even though reference is made to a plan annexed, the measurement and colouring of which would exclude it. (30 L. J., C. P., 218; 10 C. B., (N. S.), 400; S. C. at *Nisi Prius*, 2 F. & F., 208.)

177. 1823. *Cooke v. Green*. Ownership of land adjoining either side of a road is *prima facie* evidence of a right to the soil extending to the centre of the road—A recent right founded on an Inclosure under an Act makes no distinction as to the general Law. (11 Price, 736.)

177a. 1878. *Coverdale v. Charlton*. "Public Health Act, 1875," § 149—Herbage alongside a public highway held to be vested in a Local Board (as Surveyors of Highways), so that the Board could let the same, and Board's tenant maintain an Action against a Trespasser thereon—*Per Cockburn, C. J.*:—"It may be that this interpretation which we are giving to the Statute presses hardly on the owners of the soil on each side of the road, reversing as it does the maxim *usque ad medium filum*. But the Legislature is omnipotent." (47 L. J., Q. B., 446; L. R., 3 Q. B. D., 376; 38 L. T., 687; 42 J. P., 517.) [Effect of decision set aside in part by the "Highway Act, 1878."]

178. 1835. *Doe dem. Barrett v. Kemp*. Where it was questioned whether a strip of land between old inclosed lands and a highway belonged to the Lord of the Manor or the adjacent owner, it was held that in order to rebut the presumption of Law evidence might be received of acts of ownership by the Lord on similar strips bordering another part of the same road

and not adjoining his freeholds. (2 Scott, 9; 2 Bing., N. C., 102; 1 Hodges, 231.)

179. 1847. *Doe dem. Harrison v. Hampson*. The presumption of Law that slips of waste land adjoining a highway belong to the owner of the adjacent enclosed land may be rebutted by evidence tending to raise a contrary presumption. (17 L. J., C. P., 225; 4 C. B., 267.)

180. 1824. *Doe dem. Jackson v. Wilkinson*. Defendant enclosed a piece of waste land adjoining a highway and occupied it for 30 years without paying rent; then the adjacent owner demanded a rent of 6d. which was paid 3 times—Held that in the absence of other evidence this was conclusive to show that the occupation began with the owner's permission—Verdict for the plaintiff as owner held, good. (3 B. & C., 413.)

181. 1827. *Doe dem. Pring v. Pearsey*. It is a presumption of Law that waste land adjoining a road belongs to the owner of the adjoining enclosed land, whether freeholder, leaseholder, or copyholder, and not to the Lord of the Manor. (5 L. J., (O. S.), K. B., 310; 7 B. & C., 304; 9 D. & R., 908.)

182. 1757. *Goodtitle v. Alker*. An Action of Ejectment lies by the owner of the soil for land over which a highway runs, notwithstanding the right of way. (1 Burr., 133.)

183. 1816. *Grose v. West*. Though the presumption is that waste land adjoining a road belongs to the adjacent owners, yet if the waste strips communicate with open commons or other larger portions of land the presumption is either done away with, or considerably narrowed, for evidence of ownership of the larger portions applies also to the strips of land which are in communication with them. (7 Taunt., 39.)

184. 1865. *Harris v. Hoskins*. Waste land by the side of a highway held to be part of the highway, and not "open land," within the "Night Poaching Act," 9 Geo. IV. c. 49, § 1. (34 L. J., M. C., 145; [Reg. v. Harris] 12 L. T., 303; 13 W. R., 652.)

185. 1816. *Headlam v. Hedley*. It is only a presumption of Law (in the absence of positive evidence) that the right of the soil in a public highway belongs (when no other proprietor appears), to the owner of the adjoining closes *usque ad medium filum viæ*—If there are circumstances which throw doubt upon this presumption, a plaintiff who claims the road in an Action of Trespass must bring some direct evidence of his title. (Holt, N. P., 463.)

186. 1859. *Holmes v. Bellingham*. The presumption which, in the absence of evidence, prevails in the case of a public highway, that the soil *usque ad medium filum viæ* belongs to the adjacent owners applies also to the case of a private way. (29 L. J., C. P., 132; 7 C. B., (N. S.), 329; 33 L. T., (O. S.), 239.)

187. 1840. *Holmes v. Upton*. Encroachment on private lands by Turnpike Trustees erecting buttresses to sustain an embankment, such buttresses being erected in defiance of the protest of the owner—Mandatory Injunction to remove them granted. (L. R., 9 Ch. App., 214, n.)

187a. 1878. *Lang v. Kerr, Anderson, & Co.* Local Act—Requisition at the instance of a Local Authority on a landowner to fence a public footpath running alongside the river Clyde and over landowner's property—Held that the Local Act contained no provision justifying the requisition of the Local Authority. (W. N., 1878, p. 54.)

188. 1831. *Loveridge v. Hodsell*. *Per Taunton J.*:—"A footpath by the road-side, included within the hedge or fence of the road, is as much part of a public highway as that which is travelled over by carriages." (2 B. & Ad., 602, at p. 610.)

189. 1859. *Potter v. Perry*. There is no general law imposing on the owner of lands adjoining a public road, the obligation to maintain fences. (23 J. P., 644.)

190. 1859. *Reg. v. Johnson*. The common notion that owners of land on the sides of a highway, may encroach up to within 15 ft. of the centre is (*Per Erle C. J.*) erroneous; the question will always be whether the parts enclosed have or have not been used as part of the highway. (1 F. & F., 657.)

191. 1862. *Reg. v. U. K. Electric Telegraph Co.* Indictment for obstructing highways by Telegraph posts—In an ordinary highway unless there is evidence to the contrary, the rights of the Public extend to the whole space within the fences, whether metalled or not—If the obstruction is permanent, and interferes with the free use of the way by foot passengers, it does not avail as a defence that the posts are placed off the carriage-way and ordinary foot-way. (31 L. J., M. C., 166; 2 B. & S., 647, n.; 6 L. T., 378.)

192. 1788. *Re v. Llandilo Roads Commissioners*. Road Trustees diverting a road and carrying it through enclosed lands, erecting fences and repairing such fences for a time, cannot be held perpetually liable for the maintenance of such fences unless the duty is cast on them by Statute—A "road" is to be taken to mean only the surface over which the Public have a right of passage. (2 T. R., 232.)

193. 1858. *Salisbury (Marquis of) v. Great Northern Railway Co.* Land purchased under Turnpike Acts—Held that the presumption that the soil of a road was vested in the plaintiff as owner of the adjacent land, was not rebutted by the Turnpike Acts, so as to cast upon him the *onus* of showing that the soil of the road had not been purchased by the Turnpike Trustees. (28 L. J., C. P., 40; 5 C. B., (N. S.), 174; 32 L. T., (O. S.), 175.)

194. 1828. *Scales v. Pickering*. Special Act authorising the breaking up of highways, footways, and streets, by a Water Company—Provido; not to enter private lands without owner's consent—Held that the Company had no authority to enter a private field merely because there was a public footpath across it—"Footways" must in such an instance be limited to paved ways running by adjacent buildings, and cannot extend to a path over a private ground. (6 L. J., (O. S.), C. P., 53; 4 Bing., 448; 1 Moo. & P., 195.)

195. 1860. *Scannell v. French*. The owner of land contiguous to a public road stopped up a gap in a ditch which separated his land from the road through which gap water off the road had been accustomed to flow—Held that he had not been guilty of an obstruction. (11 Ir. C. L. R., 275; 2 L. T., 94.)

196. 1839. *Soames v. Morrell*. Where strips of land lie between a highway and an adjacent inclosure the legal presumption is that the soil belongs to the owner of the adjoining inclosure. (1 Bea., 251.)

197. 1860. *Simpson v. Dendy*. Waste land adjoining a highway—The ordinary presumption of ownership in favour of the owner of adjacent inclosed land is strongly confirmed by proof of distinct acts of ownership on his part extending over many years, and never questioned. (8 C. B., (N. S.), 433; 6 Jur., (N. S.), 1197.)

198. 1869. *Smith v. Mackie*. "Turnpike Act, 1822," § 118—Conviction for breaking up soil of land, to wit, a bank formed of road scrapings which had become turfed over—Conviction affirmed. (21 L. T., 392.)

199. 1819. *Steel v. Prickett*. The presumption is that waste land adjoining a road belongs to the adjacent owner and not to the Lord of the Manor; but reputation is admissible to rebut this presumption, and to prove the existence of a manor, even where no manorial rights can be proved to have been actually exercised. (2 Stark., N. P. C., 463.)

200. *Stevens v. Whistler*. An owner of land abutting on one side of a public highway is *prima facie* owner of the soil of one half of the highway in width, and a defendant in Trespass must plead soil and freehold in another, in order to compel the plaintiff to new assign so as to confine the trespass to the part of the highway which was his property. (11 East, 51.)

201. 1844. *White v. Hill*. Presumptions as to ownership of soil by the side of a highway—The ordinary presumption is that as against the Lord, an adjoining owner is owner of all land *ad medium flumina*—This presumption does not apply to cases between freeholders, both claiming under the same title, and it may be rebutted. (14 L. J., Q. B., 79; 6 Q. B., 487.)

CHAPTER V.

STOPPAGE, DIVERSION, AND WIDENING OF HIGHWAYS.

(1.) NOTICES.

202. 1848. *Reg. v. Arkwright*. 59 Geo. III. c. 134, § 39, enables the Church Commissioners to stop up paths and entrances to Churchyards with the consent of Justices, and on notice being given in the manner and form prescribed by the "Highway Act, 1815" [Repealed]—Held that the notice required must, under the circumstances, be given *before* the making of the Order of the Commissioners—The words "on notice being given" must in this case be read as "after notice given." (18 L. J., Q. B., 26; 12 Q. B., 960; 12 L. T., (O. S.), 271.)

203. 1865. *Reg. v. Huntingdonshire JJ.* 8 & 9 Vict. c. 118, §§ 62-3—A notice of appeal to Quarter Sessions against stopping up a road cannot be objected to on the ground that it comprises part of the road only—

An increase in an appellant's liability as a Ratepayer is not to be reckoned in considering whether he is aggrieved—*Quere* whether the legal effect of the appeal, if successful, would be to leave the whole road open? (L. R., 1 Q. B., 36; 13 L. T., 443.)

204. 1873. *Reg. v. Powell*. 59 Geo. III. c. 69, § 1: "Highway Act, 1835," § 84—Legal proceeding pending against a Surveyor for not repairing a certain highway—A notice calling a Vestry Meeting for taking into consideration such proceedings and for "other purposes connected with the highways" of a certain hamlet held sufficient to cover a proposal for stopping up the highway alluded to. (42 L. J., M. C., 129; L. R., 8 Q. B., 403; 28 L. T., 697.)

205. 1838. *Reg. v. Stock*. 59 Geo. III. c. 134, § 39—Churchyard Paths—There is no appeal against an order of the Church Commissioners stopping up, under

this section, a useless footway through a Churchyard—Though the section incorporates the form of notice annexed to the "Highway Act, 1815" [repealed], it gives thereby no right of appeal, for no such right can be given by implication only; had such right been given by reference the repeal of the Statute to which reference is made would not have taken it away. (7 L. J., M. C., 93; 8 A. & E., 405.)

206. 1870. *Reg. v. Surrey JJ.* "Highway Act, 1835," § 85: "Highway Act, 1864," § 21—Notices for stopping up a highway—*Certiorari*—A person residing near a highway to be affected, is to be regarded as a person aggrieved—The publication of notices at each end of the highway to be stopped up is a condition precedent, and where roads form one system, if each has been treated as a separate road, notices must be posted at each end of each road. (39 L. J., M. C., 145; L. R., 5 Q. B., 466.)

207. 1831. *Rea v. Horner.* "Highway Act, 1815," [Repealed]—An Order for diversion, &c., described a highway by its *termini* and by reference to marks on a plan annexed—Notice published of Order but no plan annexed to notice, and only a description given of *termini* and length in yards—Order held to be explained by plan, and good; but notice, insufficient. (2 B. & Ad., 150.)

208. 1822. *Rea v. Townsend.* Local Inclosure Act—Commissioner empowered to stop up any way under an Order of 2 Justices, subject to appeal as though the Order had been originally made by Justices—Further, liberty to a party aggrieved to appeal within 6 months—Road stopped up with consent of Justices but without the notices required by the "Highway Act, 1815," § 2 [Repealed] having been given—Held that under these circumstances an appeal within 6 months was good, notwithstanding the want of notices. (5 B. & Ald., 420.)

(2.) ORDERS FOR STOPPING UP, &c.

209. 1800. *Davison v. Gill.* "Highway Act, 1773," § 19 [Repealed and re-enacted by the "Highway Act, 1835," § 118]—The enactment that the forms set forth in the Schedule "shall be used on all occasions with such additions and variations only as may be necessary," is to be construed literally; a material variation from the form prescribed for stopping up held fatal and liable to be taken advantage of in a collateral proceeding. (1 East, 64.) [Statute held in *Rea v. Casson* (3 D. & R., at p. 40) to be directory only, so far as concerns recital of names of proprietors along new road.]

210. 1814. *De Ponthieu v. Pennyfeather.* "Highway Act, 1773," § 19 [Repealed]—An Order of Justices which recited that they had viewed a new road and found it in good condition and repair held a sufficient Certificate—If the Certificate be deposited with the Clerk of the Peace the Statute is satisfied, enrolment being only directory—Where a road is stopped by Order of Justices and a new one substituted, partly over the ground of a stranger and partly over an accustomed road, that is a sufficient compliance with the Statute, provided the new road conveys the Public to the same place as the old one did. (1 Marsh., 261; 5 Taunt., 634.)

211. 1821. *Harber v. Rand.* "Inclosure Act, 1801," § 8: Local Act—Old footway omitted from new map because intended to be stopped up—Map duly signed by Commissioners and by 2 Justices—Held that such omission, even with such signatures, did not satisfy the Statute, and that an Order made in form of Law and subject to appeal was necessary. (9 Price, 58.)

212. 1826. *Logan v. Burton.* "Inclosure Act, 1801," § 8, authorising Commissioners to appoint public carriage roads and highways, and to stop up any roads or tracks; with proviso for consent of 2 Justices:

Local Act authorising Commissioners with such consent to stop up old roads besides those over the lands to be inclosed—Held that the enactment in the General Act included footways, and that such footways were subject to the proviso—Therefore the said consent was requisite in order to stop up a footway passing partly over land to be inclosed and partly over an old inclosure. (4 L. J., (O. S.), K. B., 217; 5 B. & C., 513; 8 D. & R., 299.)

213. 1874. *Reg. v. Harvey.* "Highway Act, 1835," § 85—A Certificate under the hands of 2 Justices is sufficient if it states the existence of the circumstances required by § 85—It is unnecessary that it should recite that the preliminaries required by § 84 have been complied with—Dictum in *Reg. v. Worcester-shire* (23 L. J., M. C., 113) countenancing an objection on the ground of such omission, not followed. (44 L. J., M. C., 1; L. R., 10 Q. B., 46; 31 L. T., 505; [*Harvey v. Bethnal Green Vestry*] 39 J. P., 272.)

214. 1840. *Reg. v. Jones.* "Highway Act, 1815," § 2—Order for stopping up a highway—"We," &c., "having viewed," &c., "and it appearing to us that such highway is unnecessary," &c., held bad—The words do not necessarily imply that the Order was made "upon the view" "of the said Justices" according to the Act—They may imply that it appeared by evidence which was independent of the view. (10 L. J., M. C., 5; 12 A. & E., 684; 4 P. & D., 520; 1 Arn. & H., 113.)

215. 1871. *Reg. v. Maule.* "Highway Act, 1835," §§ 84 and 88—Proceedings taken by a private individual to divert a highway accepted by Vestry but no Order in writing given by Chairman of Vestry to Surveyor to apply to Justices—The Quarter Sessions held that a 10 days' notice of appeal was sufficient, but that the Certificate was bad for not alleging a Chairman's Order in writing—Held by Superior Court that the Quarter Sessions were wrong on both points. (41 L. J., M. C., 47; 23 L. T., 859.)

216. 1866. *Reg. v. Phillips.* "Highway Act, 1835," § 85—Certificate of Justices showing that a way proposed to be substituted was not entirely new, but comprised two existing ways which would be widened and enlarged so as to make them more commodious and convenient—Held (*Welch v. Nash*, 8 East, 324, dissented from) that it was not necessary that the substituted highway should be entirely new—"nearer or more commodious"—It is sufficient that the Certificate alleges one alternative (*Reg. v. Shiles*, 1 Q. B., 919, dissented from)—It is not necessary that the proposed new highway should be completed before the Certificate is obtained, and therefore the Certificate may allege that the old highway will be unnecessary when the proposed alterations are completed. (35 L. J., M. C., 217; L. R., 1 Q. B., 648; 7 B. & S., 593.)

217. 1872. *Reg. v. Surrey JJ.* "Highway Act, 1835," § 84—Diversion—Certificate by Justices that new path would be more commodious but no mention made of owner's consent—Written consent of owner enrolled with Certificate and Plan—Held that the requirements of the Act had been in substance complied with—*Certiorari* refused. (26 L. T., 22.)

218. 1875. *Reg. v. Waller.* "Highway Act, 1773," § 17 [Repealed]—Old highway stopped up and sold subject to a right of way in order to give access to a certain footpath—Held that another footpath which had communicated with the disused highway, having by virtue of the Order of the Justices become a *cul-de-sac*, the adjacent landowner was justified in obstructing the way at the point of communication. (31 L. T., 777.)

219. 1854. *Reg. v. Worcestershire JJ.* Appeal against Order for stopping a highway—The Sessions have jurisdiction to consider any substantial defect which appears on the face of a Certificate and are not limited to trying by a Jury the 3 questions specified

in the "Highway Act, 1835," § 89—Where there is no appeal it is the duty of the Sessions to be satisfied that the Certificate is correct on its face, and accompanied by plan and proof such as the Statute requires. (23 L. J., M. C., 113; 3 E. & B., 477; 2 C. L. R., 1333; 22 L. T., (O. S.), 332.) [See *Reg. v. Harvey*.]

220. 1777. *Rea v. Balme*. "Highway Act, 1773," § 16 [Repealed]—The power herein conferred on Justices to order any highway to be widened extends to roads repairable *ratione tenuræ*—On disobedience to such an Order the party may be proceeded against, either summarily under the Statute, or by Indictment. (2 Cowp., 648.)

221. 1835. *Rea v. Cambridgeshire JJ.* "Highway Act, 1815," § 2 [Repealed]—An Order of Justices for stopping up a highway must show that the Justices viewed the highway together, and that the finding it unnecessary was the result of that view. (5 L. J., M. C., 6; 4 A. & E., 111; 5 N. & M., 440; 1 H. & W., 600.)

222. 1836. *Rea v. Downshire (Marquis of)*. "Highway Act, 1815," § 2 [Repealed]—Order of Justices recited that "having particularly viewed the public roads" within the parish; then other words; and then the words "and being satisfied," &c., held bad, because the latter words were separated in a marked manner from the former words: the decision might have been based on reasons, stated or otherwise, other than the simple "view." *Per* Lord Denman, C. J.:—"If so, the Justices never obtained jurisdiction over the subject"—Justices in Special Sessions having made an Order to stop a highway and the time for appeal having elapsed, it cannot be contended, on a prosecution for obstructing such way that the Order was bad because the Justices were not properly summoned to the Sessions—*Quære*, If a road long used as a public thoroughfare be lawfully stopped up at one end and the right of way over the remainder is gone? *Per* Patteson J.:—It is not. (5 L. J., M. C., 72; 4 A. & E., 698; 6 N. & M., 92.)

223. 1815. *Rea v. Hertfordshire JJ.* "Highway Act, 1773," § 19 [Repealed]—If Justices make an Order to divert a highway, and afterwards an Order to stop up the old way, a party aggrieved may appeal against the last Order though too late to appeal against the first. (3 Maule & S., 459.)

224. 1810. *Rea v. Incedon*. If the Court are satisfied that a nuisance indicted is already effectually abated before Judgment is prayed upon the Indictment they will not in their discretion give Judgment to abate it—And they refused to give such Judgment upon an Indictment for obstructing a highway where the highway was, after the conviction, duly diverted and stopped up, there being the requisite Certificate that the new way was open for traffic and so much of the old way as was retained had been freed from obstructions. (13 East, 164.)

225. 1822. *Rea v. Kirk*. "Highway Act, 1815," § 2 [Repealed]—Order for the diversion of a highway reciting the consent of a former owner who was dead when the Order was actually made, held bad—An Order must show the consent in writing under seal of the actual owner for the time being of the land through which the proposed new highway is to run. (1 B. & C., 21; [*Rea v. Denbighshire JJ.*] 2 D. & R., 52.)

226. 1823. *Rea v. Kent JJ.* "Highway Act, 1815," § 2 [Repealed]—Order for diversion of footway based *inter alia* on the consent of an attorney for a landowner acting under a power of attorney, but the power did not appear on the face of the Order—Order held bad. (1 B. & C., 622; [*Rea v. Crane*] 3 D. & R., 6.)

227. 1830. *Rea v. Kent JJ.* Order of Justices diverting a highway and substituting a new one, containing also an Order for stopping up the old highway held bad—Justices have no power to stop up an old

road until the new one is made. (8 L. J., (O. S.), M. C., 73; 10 B. & C., 477.) [See *Reg. v. Phillips*, on the last point.]

228. 1827. *Rea v. Kenyon*. "Highway Act, 1815," § 2 [Repealed]—An Order of Justices for stopping up a footway must distinctly state in what Parish the footway is situated, and must describe its length and breadth—*Semble*, that the Order must be for sale as well as for stopping up. (6 B. & C., 640; 9 D. & R., 694.)

229. 1836. *Rea v. Middlesex JJ.* "Highway Act, 1815" [Repealed]—Held that Justices in Special Sessions could not by one and the same Order direct that a highway should be diverted, a new one being substituted, and that the old way should be stopped—There must be two Orders, one for diverting and substituting; the other for stopping up; and the former must precede the latter. (6 L. J., M. C., 10; 5 A. & E., 626; 1 N. & P., 92; 2 H. & W., 407.)

230. 1836. *Rea v. Milverton Inhabitants*. "Highway Act, 1815," § 2 [Repealed]—An Order for stopping up a highway containing the expression "having upon view found and it appearing to us" that a certain highway, &c., is unnecessary, would be good; such recital does not imply that the Justices acted upon other information than their own view—An Order is bad if it stop up half the breadth of a highway leaving the rest open; even though the other half is not within the division of the Justices making the Order; Justices have no authority to narrow a highway, or in the same Order to stop more than one highway—*Quære*, Whether the Justices of 2 divisions within which opposite halves of the road lay could, by Orders made concurrently, stop both sides? (6 L. J., M. C., 73; 5 A. & E., 841; 1 N. & P., 179; 2 H. & W., 434.)

231. 1828. *Rea v. Rogers*. "Highway Act, 1815," § 2 [Repealed]—An Order for stopping up a highway must clearly recite that it appeared to the Justices, *on view*, that the highway was unnecessary—An Order stating that they "had, on view, found or that it appeared" to them, &c., held bad. (6 L. J., (O. S.), M. C., 106; 2 M. & R., 289; [*Rea v. Worcestershire*] 8 B. & C., 254.)

232. 1826. *Rea v. Somersetshire*. "Highway Act, 1773," § 48 [Repealed]—Where Justices act wholly without jurisdiction *Certiorari* remains available notwithstanding that the Statute under which they professed to act takes away the right to a *Certiorari*—In such a case their "Order" is not an Order in pursuance of the Statute relied on. (5 B. & C., 816; 6 D. & R., 469.)

233. 1828. *Rea v. Winter*. An Order for diverting and stopping up a highway and substituting a road is bad, unless it appears that the Public acquire as permanent a right in the latter as they had in the former—*Semble*, that when a highway is diverted, the old road cannot be continued for foot-passengers only. (7 L. J., (O. S.), M. C., 15; 3 M. & R., 433; 8 B. & C., 785.)

234. 1807. *Welch v. Nash*. "Highway Act, 1773," § 19—A new highway must be set out before the old one is stopped up; it is not sufficient that another old highway is widened in parts to answer the purpose of a new road—If a new highway be not set out before the old one is stopped up, the legality of the Orders of Justices for diverting the old road and stopping it may be questioned in an Action of Trespass, notwithstanding that such Orders were confirmed by the Sessions on Appeal, stating the fact of a new road being set out in lieu of the old one. (8 East, 394.)

235. 1859. *Williams v. Eytton*. Inclosure Award directing the stopping up of a road subject to the sanction of Justices—Road stopped by a gate and disused for 28 years, except as to some slight user by foot passengers—No direct evidence that Justices had issued an Order, though a Certificate that the new roads had been formed was produced—Held nevertheless that

a Jury might from so long a disuse of the road infer that there had been the proper Order. (28 L. J., Ex., 146; 4 H. & N., 357; 32 L. T., (O. S.), 336.)

236. 1863. *Wright v. Frant Overseers*. "Highway Act, 1835," §§ 85 and 113—Proposed diversion—Certificate under § 85, by Justices after a meeting of inhabitants of Parish within which the footway was situated—But inasmuch as that part of the Parish had been annexed to an Improvement Act District, held that the meeting ought to have been of the Ratepayers of such District—"Highway Act, 1835," did not apply—*Semle*, that a Certificate need not state that a proposed new highway is nearer and more commodious to the public; *Reg. v. Shiles* disapproved of. (32 L. J., M. C., 204; 4 B. & S., 118; [*Reg. v. Wright*] 8 L. T., 455.)

(3.) APPEALS AGAINST ORDERS.

237. 1841. *Lock v. Sellwood*. "Highway Act, 1835," § 88—Distress Warrant issued to levy the Costs incurred by a party in prosecuting an Appeal under this section which Warrant did not recite any Order of Quarter Sessions for the payment of such Costs, but was founded on a subsequent conviction by 2 Justices out of Sessions for non-payment of such Costs—Warrant held illegal, and no property passed to the purchaser of goods seized and sold under it. (1 Q. B., 736.)

238. 1854. *Reg. v. Finchley Surveyors: Pouncey Ex parte*. The Quarter Sessions have no discretion as to the award of Costs under the "Highway Act, 1835," § 90—It is imperative on the Court to award Costs. (2 C. L. R., 1593.)

239. 1857. *Reg. v. Lancashire JJ.* "Highway Act, 1835," § 88—Where the General Quarter Sessions commences on a certain day, and is afterwards adjourned and held on another day at another place in order to decide matters arising in the vicinity of the latter place, the requisite notice of appeal under the "Highway Act, 1835," § 88, must be given 10 days before the day first mentioned, though the highway be in the vicinity of the latter place. (27 L. J., M. C., 161; 8 E. & B., 563; 30 L. T., (O. S.), 149.) [See *Reg. v. Sussex*, 34 L. J., M. C., 69.]

240. 1864. *Reg. v. Midgley L. B.* "Highway Act, 1835," §§ 84-9—Stopping up and diversion of a highway—Certificate of Justices—Jurisdiction of Sessions—Justices have no power to stop up a highway because at some future time a road not yet made will when completed be more commodious—On an appeal against an Order to divert some roads and stop up others, the Quarter Sessions may, under § 87, confirm the Order as to the stopping up, and quash it as to the diverting. (33 L. J., M. C., 188; 5 B. & S., 621.)

241. 1869. *Reg. v. Surrey JJ.*—"Highway Act, 1835," §§ 85 and 88: "Highway Act, 1864," § 21—Order of Special Sessions for discontinuance of highway—Held that under the later Act an Appeal lay to the Quarter Sessions, for the words "like proceedings" must be taken to include all proceedings in reference to an Appeal given by § 88 of the earlier Act, as well as all proceedings directed by § 85, for the purpose of procuring the discontinuance of a highway. (39 L. J., M. C., 49; L. R., 5 Q. B., 87; 18 W. R., 166.)

242. 1845. *Reg. v. Yorkshire, N. R., JJ.* "Highway Act, 1835," § 105—Notice to a Justice of intended Appeal need not be served on the Justice personally—Leaving the notice at his dwelling-house suffices. (14 L. J., M. C., 91; 7 Q. B., 154; 1 New Sess. Cas., 574.)

243. 1862. *Reg. v. Yorkshire, W. R., JJ.* "Highway Act, 1835," § 90—Notice of Appeal against Order of Justices for a diversion of a highway—Notice by the person who had obtained the Order of his intention to abandon it—Appeal entered at Sessions—Held that the person who intended to appeal was entitled to

his Costs notwithstanding the abandonment—He might apply at any time during the day of Sessions. (31 L. J., M. C., 271; 2 B. & S., 811; 6 L. T., 494.)

244. 1835. *Rev. v. Adey*. "Highway Act, 1815," § 3 [Repealed]—Order to stop up—A notice of Appeal is sufficient which states that the appellants are aggrieved by being compelled to travel a greater distance to their market town from their respective residences, than they would have had to have travelled if the road intended to be stopped up were kept in a proper state of repair—The notice need not state that they were aggrieved by the Order. (4 L. J., M. C., 76; 4 N. & M., 365; 1 H. & W., 42.)

245. 1826. *Rev. v. Essex JJ.* "Highway Act, 1815," § 2 [Repealed]—An Appeal against an Order stopping up a highway must emanate from some person "injured or aggrieved" (pursuing the language of the Appeal clause) [now "Highway Act, 1835," § 88] or the appellant will have no *locus standi*—The Act does not give an appeal to all persons promiscuously—The words "injured or aggrieved," refer to special interests arising out of nearness of habitation or frequent occasion for user. (5 L. J., (O. S.), M. C., 65; 7 D. & R., 658; 5 B. & C., 431.)

246. 1802. *Rev. v. Staffordshire JJ.* "Highway Act, 1773," § 19 [Repealed]—Order for stopping highway—Held that the Appeal must in literal compliance with the Statute be to the next Quarter Sessions after the Order made, without reference to any notice received by the appellant of such Order. (3 East, 151.)

247. 1828. *Rev. v. Yorkshire W. R., JJ.* Local Act—Right to appeal against Order to stop old highway—Held that in the notice of Appeal it was necessary to aver that the party intending to appeal was aggrieved by the Order. (6 L. J., (O. S.), M. C., 59; 7 B. & C., 678; 1 M. & R., 547.)

248. 1835. *Rev. v. Yorkshire, W. R., JJ.* 58 Geo. III., c. 68, § 3—Order to stop a highway—Appeal—It sufficiently appears that an appellant is a party "aggrieved" if the notice states that he and his tenants, occupiers of lands near the highway, and who have hitherto rightfully used it, and also the Public, will be put to great inconvenience by being obliged henceforth to use a more circuitous road—A Statute required "ten days' notice" of an Appeal—Held, notwithstanding a rule of Sessions, that this must be taken to mean that one day was to be reckoned inclusively, and one, exclusively: If both days were to have been excluded from the computation the Legislature would probably have said "ten clear days' notice"—An appellant appealed against 3 Orders, but paid the fee as upon one Appeal: at Sessions his counsel, called upon to make an election, elected to proceed on one which was dismissed because of a supposed informality; nothing was said about the other 2 Orders—The Superior Court, holding that the decision of the Sessions was erroneous on the supposed informality (which was common to all 3 Orders), granted a *Mandamus* to hear Appeals against all 3 Orders. (2 L. J., M. C., 93; 4 B. & Ad., 685; 1 N. & M., 426.)

249. 1841. *Sellwood v. Mount*. "Highway Act, 1835," § 90—Costs cannot be awarded generally; a specific amount must be named, and an Order which fails to do this cannot be enforced—The non-payment of Costs awarded under § 90 is not an "offence" for which the party in default can be convicted under § 101—A Warrant of Distress under § 103, and founded, not on the Order of Sessions itself, but on a subsequent conviction for non-payment, is void, and no defence in an Action of Trespass against the convicting Justices who issue it. (10 L. J., M. C., 121; 1 Q. B., 726; 1 G. & D., 358.)

250. 1873. *Swift v. Lancashire JJ.* "Highway Act, 1835," § 88—Order to stop up highway—Notice of Appeal must be given 10 days before original Quarter Sessions, not 10 days before the adjourned

Sessions of the district in which the highway is situated—*Reg. v. Sussex* (34 L. J., M. C., 69) distinguished. (22 W. R., 76.)

(4.) POWERS OF RAILWAY COMPANIES.

251. 1860. *A. G. v. Dorset Railway Co.* "Railways Clauses Act, 1845," § 53—Plans and sections showing that a highway would be crossed by a skew-bridge—Variation from plan, and road wrongfully diverted and 2 abrupt turns made in it so as to enable the Railway to cross the road at a right angle—Injunction granted at the suit of the Road Authority to restrain the prosecution of the proposed diversion. (3 L. T., 608; 9 W. R., 189.)

252. 1842. *A. G. v. Eastern Counties Railway Co.* Statutory powers of a Railway Company to arch over public thoroughfares for the construction of its Railway held to include the right to do the same thing for the erection of a station. (12 L. J., Ex., 106; 10 M. & W. 263; 2 Rail. Cas., 823.)

253. 1869. *A. G. v. Ely, Haddenham, & Sutton Railway Co.* "Railways Clauses Act, 1845," §§ 16, 46, 53, and 56—If a Railway crosses a highway without diverting it, a bridge must be made according to § 46, but the highway may be diverted to a place where there is a level crossing, if the road so diverted will be more convenient than a bridge. (38 L. J., Ch., 258; L. R., 4 Ch. App., 194; 20 L. T., 1.)

254. 1873. *A. G. v. Great Eastern Railway Co.* Special Act, incorporating "Lands Clauses Act, 1845," and giving power to stop up streets within a given area—S. Street within the area, but shown on the deposited plans as crossed by an arch, and mentioned in a subsequent Act as crossed by a tunnel—Held that the Company might stop up the street, the power to cross by an arch or tunnel not limiting their full rights within the prescribed area. (41 L. J., Ch., 505; L. R., 6 H. L., 367; 26 L. T., 749.)

255. 1850. *A. G. v. Great Northern Railway Co.* "Railways Clauses Act, 1845," § 56—Two Roads—One stopped up by Company who contended that the use of the other road was a sufficient substitution, such other road being as convenient as any entirely new road could be—Held that the requirement of the Statute would not be satisfied without the formation of a new road to take the place of the one stopped—An application for an Injunction deferred until the road was made entirely impassable, held not made too late. (4 De G. & S., 75; 14 Jur., 684.)

256. 1849. *A. G. v. London & South Western Railway Co.* "Railways Clauses Act, 1845," § 56—Proposed interference with a road by a Railway Company diverting the line of the road in order to save the expense of raising part of it—Effect of the diversion that a sharp turn would be introduced into a road previously straight—Injunction granted, it being shown that the Company was not doing the minimum of damage, and might effect the crossing without such material inconvenience to the Public by works somewhat more expensive to itself. (3 De G. & S., 439; 13 Jur., 467.)

257. 1837. *A. G. v. London & Southampton Railway Co.* Special Act wherein was prescribed the future minimum width of the roadways of roads which were to be crossed by Railway arches—Held that a portion of an existing road might be occupied by necessary piers, provided that a roadway of the prescribed minimum width were in all cases secured. (7 L. J., Ch., 15; 9 Sim., 78; 1 Rail. Cas., 302.)

258. 1867. *A. G. v. Mid Kent Railway Co.* A Local Board withdrew its opposition to a Railway Bill on the insertion of a clause that all bridges carrying roads over the Railway were to be approached by gradients not exceeding 1 in 30—In a certain case to make a road rise 1 in 30 an encroachment on private

land would be necessary; the owner obtained an Injunction to prevent such encroachment—Whereupon the Company formed the road with a gradient of 1 in 20—Held that there must be no bridge with a steeper gradient than 1 in 30, and it was no answer to say that this requirement could not be complied with without stopping the Railway. (L. R., 3 Ch. App., 100; 16 W. R., 258.)

259. 1863. *A. G. v. Torkesbury & Great Malvern Railway Co.* Where the deposited plans and sections specify the space and height of a bridge by which a railway is to be carried over a road the Company will not be allowed to depart from its plans and sections, notwithstanding that § 49 of the "Railways Clauses Act, 1845," if it stood alone, would permit a less space—That Section only imposes restrictions where the mode of building bridges is not defined by any special directions. (32 L. J., Ch., 482; 1 De G. J. & S., 423; 8 L. T., 682.)

260. 1874. *A. G. v. Widnes Railway Co.* "Railways Clauses Act, 1845," § 53—Obstruction of public highway by laying down rails pending the construction, in due course, of a new highway to take the place of the one prematurely interfered with—Injunction granted at the suit of the Local Board, on ground that the highway had been rendered "dangerous and extraordinarily inconvenient," though there was no evidence that the public had been greatly inconvenienced. (30 L. T., 449; 22 W. R., 607.)

261. 1858. *Barrett v. Midland Railway Co.* Where persons are in the habit of crossing a Railway at a particular place, though no right of way there, it throws on the Company the responsibility of taking reasonable precautions as to the user of their line there. (1 F. & F., 361.)

262. 1849. *Boardman v. London & North Western Railway Co.* "Railways Clauses Act, 1845," §§ 14 and 16—Where in consequence of a Railway being raised in level, but within the lawful limits of vertical deviation, it became necessary to raise the height of a bridge over which a road was to be carried, it was held that there was no restriction as to the powers of the Company to alter the levels of the approaches to the bridge, provided the land to be affected was included within the deposited plans and sections, or mentioned on the book of reference; and that full satisfaction was made for damage done. (18 L. J., Ch., 432; 1 Mac. & G., 112; 1 Hall & T., 161.)

263. 1865. *Bilbee v. London, Brighton, & South Coast Railway.* Level crossing on a highway—Swing-gates for foot-passengers—Many trains and an obstruction to view—No Gate-keeper—Accident—Held that there was evidence of negligence on the part of the Company. (34 L. J., C. P., 182; 18 C. B., (N.S.), 584.)

264. 1846. *Braynton v. London & North Western Railway Co.* "Railways Clauses Act, 1845," § 16—Statutory power to alter the level of a highway—Allegation that an agreement with an adjacent owner precluded any interference with the said level—Held that as the exercise of the option conferred by the Act would be beneficial to the public, whereas the execution of the agreement would be prejudicial, the Act must prevail—*Semble*, that a Public Company cannot contract itself out of powers given to it for the public benefit or protection. (4 Rail. Cas., 553; [Braynton v. *Id.*] 10 Bea., 238.)

265. 1862. *Bristol & Exeter Railway Co. v. Tucker.* Special Act incorporating so much of the "Railways Clauses Act, 1845," as relates to the mode of crossing roads and the construction of bridges—Held that not only were the sections directly named incorporated, but that others not mentioned (§§ 65 and 145 and subsequent sections) prescribing the necessary machinery for enforcing penalties, were also to be deemed incorporated. (13 C. B., (N.S.), 207; 7 L. T., 464.)

266. 1858. *Burgess v. Great Western Railway Co.* A Railway Company is bound so to fence a station that the Public may not be misled, by seeing a place unfenced, into passing that way, being the shortest, to a station, and incurring risk in consequence. (32 L. T., (o. s.), 76.)

267. 1861. *Dover Harbour Warden v. London, Chatham & Dover Railway Co.* "Railways Clauses Act, 1845," §§ 45-6—Enactment in Special Act that it should be lawful for the Railway to cross a public road on a level provided a footbridge were erected, held permissive and not mandatory—And that if the Company preferred to raise the road and take the railway under the road so raised they were at liberty to do so, according to the provisions of the General Act. (30 L. J., Ch., 474; 3 De G. F. & J., 559; 4 L. T., 387.)

268. 1857. *Ellis v. London & South Western Railway Co.* "Railways Clauses Act, 1845," § 46, 61, 68—Occupation road with a public footpath along it crossed on a level by a Railway—Footpath ignored and locked gates erected—Key lost; gates left insecure; cattle straying; accident to such cattle—Held that it was a question for the Jury whether the plaintiff as owner of the cattle was guilty of contributory negligence—If a Railway Company blocks up a public way it is the duty of the Public to invoke the assistance of the law and not to take the law into its own hands and break down the obstruction. (26 E. J., Ex., 349; 2 H. & N., 424; 29 L. T., (o. s.), 389.)

269. 1852. *Exeter Road Trustees, Ex parte.* "Railways Clauses Act, 1845," § 58—County bridge pulled down by Company and another bridge erected under agreement with the Road Trustees—The Company to repair such portions of the approaches to the bridge as had been previously repaired by the County—Held that the Company had not so interfered with the road as to bring the case within § 58—The liability of the County as to the approaches had ceased, as the bridge was gone; the repair of the road, therefore, fell on the persons who would have been liable if the bridge had never existed, i.e., the Trustees, who would have a remedy on the agreement against the Company—*Mandamus* to the Company to repair therefore refused. (16 Jur., 669; 19 L. T., (o. s.), 190.)

270. 1851. *Fawcett v. York & North Midland Railway Co.* "Regulation of Railways Act, 1842," § 6 & Vict., c. 55, § 9—Railway crossing a highway on a level—Accident to horses which had strayed from a field on to the highway, and thence on to a Railway, the gates of the crossing having been left open, contrary to the Statute—Held that the road having been generally used as a highway though never taken over by the Parish; and that, as against the Company, the horses were lawfully on the highway, and therefore that the Company was liable for the neglect of its servants to keep the gates of the crossing closed. (20 L. J., Q. B., 222; 16 Q. B., 610.)

271. 1865. *Freeman v. Tottenham & Hampstead Railway Co.* "Railways Clauses Act, 1845," §§ 53-5—Restrictions as to Company stopping up a highway held not to apply to a way the rights over which had been lost by the Public—Motion for an Injunction at the suit of an adjacent owner privately prejudiced by the stoppage, refused, and the owner referred to his rights under § 55. (11 L. T., 702; 11 Jur., (N. S.), 107; 13 W. R., 335.)

272. 1860. *Leech v. North Staffordshire Railway Co.* "Railways Clauses Act, 1845," § 46—Special Act incorporating General Act but varying it as to the dimensions applicable to a particular bridge, and providing by special words for repairs thereof for 12 months—Held that this did not operate so as to relieve the Company of its perpetual obligation to repair under the General Act. (29 L. J., M. C., 150; 1 L. T., 332; [Newcastle-under-Lyne v. N. S. R.] 5 H. & N., 160.)

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273. 1864. *London & North Western Railway Co. v. Skerton Highway Surveyors.* "Railways Clauses Act"—Highway lowered to accommodate it to the levels—Held that the road thus lowered was not an "immediate approach" or "necessary work" which the Company was bound to keep in repair. (33 L. J., M. C. 158; 5 B. & S., 559; 10 L. T., 648.)

274. 1851. *London & North Western Railway Co. v. Wetherall.* "Railways Clauses Act, 1845," § 58—An Order of Justices directing a Railway Company to repair damage done by them to a road need not specify particulars of the damage or of the repairs intended to be ordered: it suffices if it states the length of road injured and directs the damage done to be made good—One such order and one Conviction for default may include several roads in the same parish. (20 L. J., Q. B., 337; 16 L. T., (o. s.), 438.)

275. 1842. *Manchester & Leeds Railway Co. v. Reg.* Railway Company empowered to cross roads but to give a headway of 18 ft., and empowered to lower roads—Held that the Company was not bound to lower the footpath as well as the carriage-way so as to give such headway over footpath. (3 Rail. Cas., 633; 3 G. & D., 269; [Reg. v. M. & L.] 3 Q. B., 528, at p. 538.)

276. 1854. *Manchester, Sheffield, & Lincolnshire Railway Co. v. Wallis.* "Railways Clauses Act, 1845," § 68—This section, which imposes on a Railway Company the duty of making a fence between Railway land, and a public highway running alongside, imposes only a duty co-extensive with the Common Law prescriptive obligation to repair fences—A person using the highway must be doing so in a lawful manner or he will have no right of action in consequence of the fence being out of repair—For horses trespassing on the highway and meeting with an accident on the adjoining railway because of the fence being insufficient or a gate open the owner has no remedy against the Company. (23 L. J., C. P., 85; 14 C. B., 213; [Wallis v. Manchester, &c.] 22 L. T., (o. s.), 286.)

277. 1863. *Manchester, S. Junction, & Altrincham Railway Co. v. Fullarton.* Where a Railway crosses a highway on a level at a place where there is a considerable traffic the fact that an engine-driver blew off steam and frightened horses waiting to cross is evidence of actionable negligence—A Railway Company must exercise its powers with due regard to the rights and safety of the Queen's subjects. (14 C. B., (N. S.), 54.)

278. 1878. *Matson v. Baird.* "Highway Act, 1835," § 71—Horse straying without negligence on to a private branch railway at a level crossing, the gates of which had been left open, and thence on to a public main line—Horse killed—Held that the owners of the private branch were not liable, as they had no statutory right to cross the high road, and only did so by the sufferance of the Road Trustees. (W. N., 1878, p. 167.)

279. 1871. *North of England Railway Co. v. Langbaurgh.* "Railways Clauses Act, 1845," § 20—A Railway Company having carried a road over its railway by means of a bridge must repair the bridge, the road, and the approaches; and the repair must include both the structure of the bridge and approaches and the metalling on both. (24 L. T., 544.)

280. 1858. *North Staffordshire Railway Co. v. Dale.* "Railways Clauses Act, 1845," § 46—Where a Railway Company carries a road over its railway by means of a bridge it is bound to repair not only the bridge and the roadway of the bridge, but the approaches thereto, and the metalling of the bridge and of the approaches. (27 L. J., M. C., 147; 8 E. & B., 836.)

281. 1862. *Phillips v. London, Brighton, & South Coast Railway Co.* "Railways Clauses Act, 1845," § 16—This Section authorises the permanent diversion of roads, and not only a merely temporary diversion

during the construction of a railway. (4 Giff., 46; 7 L. T., 663.)

282. 1841. *Reg. v. Birmingham & Gloucester Railway Co.* Railway Company empowered to raise roads to cross its line, the necessary bridges to be at least 15 ft. wide in the clear, but the roads to be continued as convenient as the roads raised—Held that to construct a bridge 15 ft. wide with approaches 30 ft. wide, the previous width of the road having been 40 ft., was not as regards the approaches a compliance with the Special Act, the power to narrow any part of the road being confined to the actual bridge itself. (10 L. J., Q. B., 322; 1 G. & D., 324; 2 Q. B., 47; 2 Rail. Cas., 694.)

283. 1853. *Reg. v. East & West India Docks & Birmingham Junction Railway Co.* "Railways Clauses Act, 1845," §§ 16 and 50—Writ suggesting that a Turnpike road had been raised to cross a railway and with an ascent greater than 1 in 30; and that the formation level of the railway had been made 2 ft. higher than was authorised—On trial of the issues raised it was found (1) that the way was not a Turnpike road but only a highway; and (2) that the allegation of the level being altered was true—*Mandamus* (1) to alter the gradient, and (2) to make the level conform to the Statute—*Mandamus* held bad as to (1) the gradient being such as was proper for a road of the class in question, and therefore as it was bad in part it was bad altogether—A carriage road is not a Turnpike road unless it is repaired by Trustees out of tolls payable by passengers—The proviso in § 16 that the Company shall do as little damage as can be, relates to the mode of doing works, and does not regulate what the works are to be. (22 L. J., Q. B., 380; 2 E. & B., 466; 21 L. T., (O. S.), 180.)

284. 1842. *Reg. v. Eastern Counties Railway Co.* Special Railway Act requiring a headway of 16 ft. for a bridge over a public carriage road and giving power to raise and lower roads—General Proviso in Act that the rights of Parishes under Local Acts were not to be prejudiced—Local Paving Act forbidding interference with pavements, &c.—Held that under the Special Railway Act, which was subsequent to the Local Act, the Railway Company was justified in lowering the carriage road if necessary to obtain the 16 ft. headway. (11 L. J., Q. B., 178; 2 Q. B., 569; 3 Rail. Cas., 22; 2 G. & D., 1.)

285. 1846. *Reg. v. Great North of England Railway Co.* Indictment for obstructing a highway by cutting through it and executing works not within the Parliamentary Powers of the Company—A Corporation aggregate may be indicted for a misfeasance. (16 L. J., M. C., 16; 9 Q. B., 315.)

286. 1839. *Reg. v. London & Birmingham Railway Co.* Special Act requiring that when any public carriage road was interfered with and carried over the railway by a bridge the minimum width should be 15 ft., and that any new road generally should be as convenient for passengers and carriages as the old road for which it was a substitute—Held that the Company was only authorised to contract so much of the road as was over the bridge, and that having contracted the approaches to the bridge and made the road there narrower than the old road there must be a verdict of "Guilty"—The expression "convenient" means convenient for a drift-way as well as for passengers and carriages. (1 Rail. Cas., 317.)

287. 1838. *Reg. v. London & Southampton Railway Co.* Mere expense is no sufficient reason for a Railway Company not making a substituted road as convenient as the original road. (3 Rail. Cas., 34 n.)

288. 1850. *Reg. v. Newmarket Railway Co.* "Highway Act, 1835," § 82—Order for diversion—Directions, *inter alia*, that no building or yard was to be interfered with—Line of new highway being found to pass over a building and yard the Surveyors shifted

the line just enough to avoid the obstacle—Held that either the Order was bad as delegating to the Surveyors a discretion as to the new line; or, if words to this purport were rejected, it did not appear that the Order had been obeyed: and that therefore the old highway was not shown to have been legally disused and capable of being stopped. (19 L. J., M. C., 24; 15 Q. B., 702; 4 New Sess. Cas., 241.)

289. 1865. *Reg. v. Rawson.* "Railways Clauses Act, 1845," § 58—The Justices who make an Order for repairs, and none others, are the proper persons to impose the penalty for default in carrying the Order into effect. (15 L. T., 179.)

290. 1850. *Reg. v. Rigby.* "Railways Clauses Act, 1845," §§ 49 and 51—The effect of these Sections is that if the available width of a road for carriages is more than 35 ft., the road may be narrowed to 35 ft. under an arch; where it is less, the arch may be made of the same width as the road, so that it be not less than 20 ft.: if the road is afterwards widened the arch must be widened in proportion up to, but not beyond 35 ft.—Footpaths are not to be taken as part of the road. (19 L. J., Q. B., 153; 14 Q. B., 687; 6 Rail. Cas., 479.)

291. 1842. *Reg. v. Scott.* Special Act authorising the obstruction of roads on condition that other roads as convenient or as nearly so as might be, should be substituted—The Company having obstructed a road and replaced it by one not so convenient, held, that they were indictable at Common Law for a nuisance to the old highway. (11 L. J., Q. B., 254; 3 Q. B., 543; 2 G. & D., 729; 3 Rail. Cas., 187.)

292. 1840. *Reg. v. Sharpe.* Special Act authorising Company to alter roads "in order the more conveniently to carry them under or over" the line—Road carried under a Railway by a skew-bridge, angle 45°, the former angle of the road having been 34°—Indictment—Direction of the Judge that if the work was done as an experienced engineer would do it, having reasonable regard to the interests both of the Company and of the Public, the Company had a right to make the diversion—The Jury having found for the Company, new Trial refused—*Somde*, "conveniently" refers to the Company as well as to the Public. (3 Rail. Cas., 33.)

293. 1853. *Reg. v. South Eastern Railway Co.* "Railways Clauses Act, 1845," § 46—Option conferred on a Railway Company to cross over or under a highway—A *Mandamus* to Company to do one of these two things is defective unless it shows on the face of it circumstances which establish the original impossibility or the original or subsequent impracticability of the Company exercising this option. (20 L. J., Q. B., 428; 17 Q. B., 485; Aff. on App., 4 H. L. C., 471; 21 L. T., (O. S.), 282.)

294. 1852. *Reg. v. Wilson.* "Railways Clauses Act, 1845," §§ 56–7—Road dedicated to the Public but certain of the formalities required by the "Highway Act, 1835," not complied with—Road improperly cut across by a Railway—Held that though the original owner has exercised control over the road in various ways and executed repairs down to a recent period he is nevertheless not the person "having the management" of such road within § 57 of the above Act, and entitled to recover penalties accordingly—To be a person "managing" he must be clothed with some duty in respect of the public *ejusdem generis* with that of "Trustees, Commissioners, or Surveyor"—*Quære*, whether the Company could be indicted for obstruction by severing and not restoring the road. (21 L. J., Q. B., 281; 18 Q. B., 348; 19 L. T., (O. S.), 86.)

295. 1849. *Reg. v. Wood Ditton Surveyors.* Rule absolute for *Mandamus* to Surveyors of Highways to make a road in accordance with a plan annexed to an Order made by Quarter Sessions—Surveyors under the influence of a Railway Company whose interest it was

that the Order of Sessions should not be complied with—The general rule that Indictment and not *Mandamus* is the proper mode of enforcing obedience by a ministerial officer to an Order of Sessions does not prevail where the Court sees that the officer is put forward merely as a nominal party, and that performance of the duty really falls to other parties. (18 L. J., M. C., 218.)

296. 1867. *Reg. v. Wycombe Railway Co.* "Railways Clauses Act, 1845," § 16—The powers herein must be understood to be restricted to acts necessary to the construction of the Railway and do not extend to acts done merely to save expense or inconvenience to the Company—*Mandamus* granted to restore the continuity of a highway unnecessarily diverted—Deposited plans do not authorise needless diversion of a highway unless special power is given by the Special Act. (36 L. J., Q. B., 121; L. R., 2 Q. B., 310; 8 B. & S., 259; 15 L. T., 610.)

297. 1832. *Roe v. Pease.* A Railway duly constructed under Parliamentary powers is not in Law a nuisance to a highway—Interference with the rights and comfort of the Public must be deemed to have been a matter contemplated and sanctioned by the Legislature. (2 L. J., M. C., 26; 4 B. & Ad., 30.)

298. 1868. *Taff Vale Railway Co. v. Davies.* Railway Act antecedent to "Lands Clauses Act, 1845"—Non-repair of approaches to a bridge carrying a Turnpike road over a Railway—Held that the Special Act did not impose any liability, and that as the "Lands Clauses Act, 1845," § 130, had no retrospective operation, the Company could not be compelled to repair. (19 L. T., 278.)

299. 1855. *Tanner v. South Wales Railway Co.* "Railways Clauses Act, 1845," §§ 53 and 55—§ 53 only applies to a temporary interference with a highway and not where the object of the Special Act is to change the nature of the road—Therefore when a Special Act authorised the conversion of a public Tramway into a Railway the promoters were held not bound to provide an equally convenient Tramway in substitution—The enactment that if any road be altered another shall be substituted must be read as if it had said 'any road other than that which the Special Act directs to be altered.' (25 L. J., Q. B., 7; 5 E. & B., 618; 26 L. T., (O. S.), 88.)

300. 1865. *Wakefield L. B. H. v. West Riding & Grimsby Railway Co.* "Railways Clauses Act, 1845," § 58—A Justice though interested is not incompetent to act if the objection against him is raised at the time of his making the Order, and waived by the parties—In such a case the objection of want of jurisdiction cannot afterwards be raised. (35 L. J., M. C., 69; L. R., 1 Q. B., 84; 6 B. & S., 794; 10 Cox, C. C., 162; 13 L. T., 590.)

301. 1862. *Wandsworth B. W. v. London and South Western Railway Co.* Road crossed by a Railway Bridge—Necessity for widening the Railway—Company owners of land on either side of the road but road vested in plaintiffs as Surveyors of Highways by Act subsequent to Railway Act—Held that the soil of the road was only vested in the Board upon a dry legal title, and to promote the public convenience—That the public convenience required the lateral enlargement of the Railway, and as the only obstruction would occur whilst the works were in progress, and the road would not ultimately be narrowed in its width, the case was not one for the extraordinary interference of the Court—Injunction refused with costs. (31 L. J., Ch., 854; 10 W. R., 814.)

302. 1864. *West Riding & Grimsby Railway Co. v. Wakefield L. B. H.* "Railway Clauses Act, 1845," § 58—Damage to road by the carts of a Railway Contractor—Held that the Justices had power to make an Order on the Company which employed the Contractor. (33 L. J., M. C., 174; 5 B. & S., 478.)

303. 1864. *Wood v. Stourbridge Railway Co.* No compensation can be claimed under the "Lands Clauses Act, 1845," for inconvenience sustained from the authorised crossing on a level of a public road by a Railway. (16 C. B., (N. S.), 223.)

304. 1865. *Wyatt v. Great Western Railway Co.* "Railways Clauses Act, 1845," § 47—Level crossing—No Railway servant in attendance to open the gates—Gates opened by plaintiff, who thereupon received an injury—Held that all such gates are under the exclusive control of the Railway Company, and that no member of the Public, even if hindered from passing, is entitled to open them for himself—Plaintiff, having therefore committed an illegal act, held not entitled to recover damages for the injury. (12 L. T., 568; 13 W. R., 837.)

CHAPTER VI.

OBSTRUCTION OF, AND NUISANCES ON HIGHWAYS.

(1.) WHAT AMOUNTS TO.

305. 1858. *Chapman v. Robinson.* "Highway Act, 1835," § 69—The erection of a building within 15 ft. of the centre of a carriage-way repaired by the Surveyor within 6 months preceding, but on a part not actually repaired or used for many years, held not to be an encroachment which Justices could deal with summarily under this Section. (28 L. J., M. C., 30; 1 E. & E., 25; 32 L. T., (O. S.), 89.)

306. 1847. *Dobson v. Blackmore.* Obstruction of access by means of a public navigable river to premises

let on lease—Action by reversioner—Judgment for the plaintiff, the reversioner, arrested on the ground that the obstruction being caused by barges and planks, no permanent injury to the reversioner was shown. (16 L. J., Q. B., 233; 9 Q. B., 991.)

307. 1795. *Dovaston v. Payne.* The Public have no general right to the use of a public highway except for the purpose of passing along it. [See Judgment of Buller, J.] (2 H. Bl., 527.)

308. 1871. *Easton v. Richmond H. B.* "Highway Act, 1864," § 51—Conviction for encroaching on a highway by building a wall within 15 ft. of its centre

but on land which had never been dedicated—Held that the Section only referred to land forming part of the highway, whether metalled or not, and that the Conviction was bad. (41 L. J., M. C., 25; L. R., 7 Q. B., 69; 25 L. T., 586.)

309. 1874. *Edgware H. B. v. Harrow Gas Co.* Agreement for permission to the defendants to open a road, they to make good the same and pay money—Action for breach—Defence that the agreement was invalid on the ground of want of consideration and as authorising a nuisance—Judgment for the plaintiffs. (44 L. J., Q. B., 1; L. R., 10 Q. B., 92; 31 L. T., 402.)

310. 1843. *Evans v. Oakley.* "Highway Act, 1835," § 69—To justify a Surveyor in taking down a fence two things must concur: (1.) The fence must be within 15 ft. of the centre of the road; (2.) It must be on the road. (1 C. & K., 125.)

311. 1869. *Field v. Thorne.* "Highway Act, 1864," § 51—Fence erected on site of a private ditch so as to be less than 15 ft. from centre of roadway—Held no encroachment; the owner had not exceeded his rights. (20 L. T., 563; [T. v. F.] 33 J. P., 727.)

312. 1630. *James v. Haynard.* If a new gate be erected across a highway it is a common nuisance although not fastened, and any of the King's subjects passing that way may cut it down and destroy it. (Croke, Car., 184; Sir W. Jones, 221.)

313. 1853. *Keane v. Reynolds.* "Highway Act, 1835," § 69—Plaintiff convicted of an encroachment, whereupon the defendant, the Surveyor, pulled down the encroachment which was a cottage—Action for Trespass—Held that the Conviction, even if erroneous, was a defence to this Action, as the present defendant was a person bound to execute and was executing the judgment of a Court of competent jurisdiction. (2 C. L. R., 245; 2 E. & B., 748.)

314. 1866. *Reg. v. Lepine.* Indictment for obstruction by encroachment—Verdict that the obstruction was "inappreciable" held equivalent to "Not Guilty." (15 L. T., 158; [Reg. v. Lepille] 15 W. R., 45.)

315. 1857. *Reg. v. Lister.* It is an indictable offence to keep dangerously inflammable materials near a common highway—On the trial of an Indictment for this offence it is a question of fact for the Jury whether the keeping and depositing, or the manufacturing, of such substances does really create danger to life and property as alleged. (26 L. J., M. C., 196; 1 Dears. & B., C. C. R., 209.)

316. 1861. *Reg. v. Mathias.* One of the Public has a right to remove from off a highway anything that is a nuisance and interferes with the convenient use of the way by passengers—The owner of the soil of a highway has, moreover, the right to remove anything encumbering the way, even if not actually a nuisance—But anything which is the usual accompaniment of a large class of foot-passengers and is so small and light as to be neither a nuisance nor injurious to the soil cannot be interfered with—*Quare*, whether a perambulator comes within this definition? (2 F. & F., 570.)

317. 1864. *Reg. v. Muttons.* Negligently to perform blasting operations in a stone quarry whereby fragments fall on a highway and so endanger the traffic is a misdemeanour indictable at Common Law—Prosecution at the instance of the Local Board—Conviction affirmed. (34 L. J., M. C., 22; 10 Cox, C. C., 6; Leigh & C., C. C., 491; 11 L. T., 386.)

318. 1862. *Reg. v. Train.* Tramway laid down without the authority of Parliament, but with the consent of the Local Authority (a Metropolitan Vestry)—Indictment for Nuisance—Verdict of "Guilty"—To withdraw part of a public highway from the use of the public is a general nuisance, and a street Tramway is such withdrawn and therefore such nuisance—It is

no answer that the consent of the Local Highway Authority has been duly given, for such consent is *ultra vires*. (31 L. J., M. C., 169; 9 Cox, C. C., 180; 2 B. & S., 640; 6 L. T., 380; S. C. at *Nisi Prius*, 3 F. & F., 22.)

319. 1834. *Rez v. Carhile.* If a person having a house in a street exhibits effigies at the windows and thereby attracts a crowd which causes the footway to be obstructed so that the Public cannot pass as they ought to do, this is an indictable nuisance—It is not necessary to show that the effigies are libellous or that the crowd consisted of idle, disorderly, and dissolute persons. (6 C. & P., 636.)

320. 1812. *Rez v. Downap.* Per Lord Ellenborough, C. J.:—"In the case of stopping a common highway which may affect all the subjects, yet if a particular person sustains a special injury from it, he has an Action." (16 East, 196.)

321. 1833. *Rez v. Gregory.* Local Act prohibiting a building within 10 ft. of a road—Footpaths declared to be part of the road—Held that a building within 10 ft. of the footpath was within the prohibition—Open shop erected on old foundations immediately adjoining a footpath and connected by a roof with a house behind which was beyond the statutory distance—Held that such open shop was a "building." (3 L. J., M. C., 25; 5 B. & Ad., 555; 2 N. & M., 478.)

322. 1812. *Rez v. Jones.* Obstruction of street—A tradesman unloading goods must not occupy the public highway for an unreasonable time—"He is not to eke out the inconvenience of his own premises by taking in the public highway into his yard . . . he must remove to a more convenient situation." (3 Camp., 229.)

323. 1830. *Rez v. Morris.* Tramway laid along a highway by a private individual, who allowed the public to use it on paying toll—Held that the facts proved an obstruction of the highway, and that the plea of public convenience was no justification. (9 L. T., (O. S.), K. B., 55; 1 B. & Ad., 441.)

324. 1805. *Rez v. Russell.* Indictment for obstructing a highway, being a street in a town, by keeping waggons a long and unreasonable time loading and unloading, though there was room for two carriages to pass on opposite side—Per *Curiam*:—"The primary object of the street was for the free passage of the Public, and anything which impeded that free passage, without necessity, was a nuisance. If the nature of the defendant's business were such as to require the loading and unloading of so many more of his waggons than could conveniently be contained within his own private premises, he must either enlarge his premises or remove his business to some more convenient spot. But the Court could not be parties to any compromise for his using the street as his own for any part of his business." (6 East, 427; 2 Smith, 424.)

325. 1758. *Rez v. Sarmon.* Indictment for setting a person on a footway to distribute handbills, whereby footpath was impeded and obstructed—Held to be not an indictable offence. (1 Burr., 516.)

326. 1802. *Rez v. Smith.* An Indictment will not lie for obstructing a highway by holding a fair or market, if there has been an uninterrupted custom for 20 years. (4 Esp., 111.)

327. 1836. *Rez v. Ward.* In an Indictment for a nuisance on a highway it will be no answer that though the work be in some degree a hindrance or nuisance yet the inconvenience is more than counterbalanced by some public benefit in another way. (L. J., 5 K. B., 221; 4 A. & E., 384; 6 N. & M., 38.)

328. 1860. *Sarrett v. Bradshaw.* "Highway Act, 1835"—Obstruction to street by hoarding authorised by a Surveyor appointed under the "Local Government Act, 1858"—Conviction on the ground that the hoarding projected unnecessarily, affirmed, the Court

being inclined to be equally divided. (*Times*, May 3, 1860.)

329. 1872. *Simpson v. Wells*. "Highway Act, 1835," § 72—Obstruction of highway—Statute Sessions for hiring servants—Distinguished from markets and fairs—There is no good custom to set up refreshment stalls at such Sessions notwithstanding a user of more than 50 years, and that the sessions had been held before 5 Eliz. c. 4—Nor is there sufficient appearance of *bona fide* claim of right by custom so as to oust the jurisdiction of Justices in case of obstruction. (41 L. J., M. C., 105; L. R., 7 Q. B., 214; 26 L. T., 163.)

330. 1875. *Spice v. Peacock*. Obstruction of a partly paved footway by goods exhibited for sale—Held that the appellant was rightly convicted. (39 J. P., 581.)

331. 1835. *Wilkes v. Hungerford Market Co.* Where a highway is obstructed for an unreasonable time by an obstruction lawful in itself for a temporary purpose (*e.g.*, a hoarding round new buildings in a street), a right of Action accrues to a person who can show that the obstruction has inflicted damage on him in his trade. (2 Bing., N.C., 281.)

(2.) BY RUBBISH AND MATERIALS; EXCAVATIONS AND UNFENCED HOLES.

332. 1868. *A. G. v. Cambridge Consumers' Gas Co.* Breaking up streets for gas pipes without authority—Injunction refused, it not being shown that there was a continuous injury either to the Public or to adjoining owners—Proper remedy, if any, would be by Indictment. (38 L. J., Ch., 94; L. R., 4 Ch. App., 71; 19 L. T., 508.)

333. 1853. *A. G. v. Sheffield Gas Consumers' Co.* Breaking up streets held not be such a nuisance as to afford sufficient ground for an Injunction—In case of a continuing nuisance the Court will not refuse an Injunction merely because the actual damage is slight. (22 L. J., Ch., 811; 3 De G., M. & G., 304; 21 L. T., (O.S.), 49.)

334. 1850. *Barries v. Ward*. Occupier bound to fence an excavation near a public way; on default and an accident happening, "Lord Campbell's Act" (9 & 10 Vict., c. 93) is applicable. (19 L. J., C. P., 194; 2 C. & K., 661; 2 C. B., 392.)

335. 1862. *Binks v. South Yorkshire Railway Co.* The owner of land adjoining a public road is under no obligations to fence excavations in his land unless they are so near the road as to be dangerous to persons lawfully using it—Where the Public have a mere permission to pass over the intermediate space, they take that permission subject to the chance of accident. (32 L. J., Q. B., 26; 3 B. & S., 244; 7 L. T., 350.)

336. 1607. *Blyth v. Topham*. An Action will not lie for digging a pit in a Common, wherein a stray mare tumbles and perishes, the mare being unlawfully on the Common—It was held to be a case of *damnum absque injuria*. (Croke, Jac. I., 158.)

337. 1878. *Clark v. Chambers*. A person placing a dangerous obstruction in a highway, or in a private road over which there is a right of way, is bound to take all necessary precautions to protect persons exercising their right of way—On neglect to do so he is liable for the consequences. (47 L. J., Q. B., 427; L. R., 3 Q. B. D., 327; 38 L. T., 454; 42 J. P., 438.)

338. 1858. *Corby v. Hill*. Building Materials unlighted by night, negligently placed by a builder in a private road by permission of the Freeholder—On an accident happening to a third party lawfully using the road, held that the builder was liable to him. (27 L. J., C. P., 318; 4 C. B., (N. S.), 556; 31 L. T., (O. S.), 181.)

339. 1813. *Covpland v. Hardingham*. Unfenced

area—Accident—Action—It is universally the duty of the occupier of a house having an area adjoining a public street so to fence it as to make it safe for passengers—It is no answer to an Action to plead that the area has been unfenced as long back as could be remembered. (3 Camp., 398.)

340. 1855. *Dover Gaslight Co. v. Dover, Mayor*. A permission to take steps for a specified object for the public advantage, *e.g.*, to break up a street in order to lay down gas pipes, shall receive a wide construction. (7 De G. M. & G., 545; 1 Jur., (N. S.), 812; 25 L. T., (O. S.), 277.)

341. 1853. *Ellis v. Sheffield Gas Consumers' Co.* Company without Parliamentary powers—Contractor digging a trench in a street—Where a person is employed to do an unlawful act by which an injury is done to a third party, the employer is liable, although he himself is not the immediate author of the injury. (23 L. J., Q. B., 42; 2 E. & B., 767; 22 L. T., (O. S.), 84.)

342. 1874. *Goodson v. Richardson*. Laying down water-mains under a highway without procuring Parliamentary powers—Consent of the Highway Board obtained, but not that of the owners of the soil—Injunction granted in effect requiring the removal of the mains, though no particular injury shown by owner of the soil. (43 L. J., Ch., 790; L. R., 9 Ch. App., 221; 30 L. T., 142.)

343. 1864. *Gray v. Pullen*. Construction of drain—A person is liable for an injury arising through negligent performance of a statutory obligation, whether performed by himself or by a contractor employed by him. (Metropolis.) (34 L. J., Q. B., 265; 5 B. & S., 970; 11 L. T., 560.)

344. 1865. *Hadley v. Taylor*. Unfenced hoist-hole within 14 inches of a public way—Defendant occupier on sufferance, during the preparation of a lease—Held that the Action was rightly brought against him and that the hole was near enough to the highway to be a "nuisance." (L. R., 1 C. P., 53; 13 L. T., 368.)

345. 1859. *Hardcastle v. South Yorkshire Railway, &c., Co.* No obligation to fence an excavation is cast upon an owner unless such excavation substantially adjoins a highway. (28 L. J., Ex., 139; 4 H. & N., 76; 32 L. T., (O. S.), 297.)

346. 1872. *Hawkins v. Robinson*. "Highway Act, 1835," § 72—Injury to a highway by a Gas Company unlawfully opening the same to lay gas pipes—Held that the consent of the Local Board was no answer; such consent being *ultra vires*. (37 J. P., 662.)

347. 1860. *Hounsell v. Smyth*. A landowner cannot be compelled to fence an excavation, unless it is adjacent to a highway, so as to constitute a public nuisance—The fact that the excavation is made in open waste land does not impose any liability upon the owner, unless he holds out any inducement to persons to come upon the land. (29 L. J., C. P., 203; 7 C. B., (N. S.), 731; 1 L. T., 440.)

347a. 1863. *Hughes v. Macfie*. Cellar-flap lawfully maintained in a street that was a public highway—Flap properly left open, and accident to passenger unlawfully meddling with it—Held that no action lay at the suit of the person meddling—*Sed aliter* at the suit of a third person innocently suffering. (32 L. J., Ex., 177; 2 H. & C., 744; 12 W. R., 315.)

348. 1871. *Kearney v. London, Brighton, & South Coast Railway Co.* Bridge over highway—Fall of an insecure brick and injury to plaintiff—Held that the Company was bound to keep the brickwork in proper repair, and that there was evidence from which the Jury might infer negligence. (40 L. J., Q. B., 285; L. R., 6 Q. B., 759; 24 L. T., 913.)

349. 1840. *Marriott v. Stanley*. Action for compensation for injury occasioned by an obstruction in a

highway—Left to the Jury to say whether the plaintiff was guilty of contributory negligence; whether he had acted with such a want of reasonable and ordinary care as to disentitle him to recover—Held that such a direction was proper. (1 Scott, N. R., 392; 4 Jur., 320; S. C. as to Costa, 10 L. J., C. P., 50.)

350. 1842. *Morgan v. Leach*. "Highway Act, 1835," §§ 20 and 73—Held that no duty is imposed by the Act on a Surveyor to fence a dangerous pit—Conviction quashed. (12 L. J., M. C., 4; 10 M. & W., 558.)

351. 1844. *Mould v. Williams*. "Highway Act, 1835," § 73—A Justice's Order reciting that timber has been laid on a highway, and directing its removal is conclusive to show that the *locus in quo* is a highway, and the owner cannot in an Action of Trespass against the Justice dispute his jurisdiction on the ground that the *locus* was not a highway; he ought to have raised the objection at the hearing before the Justices. (5 Q. B., 469; Dav. & Mer., 631.)

352. 1853. *Peachey v. Rowland*. If A. employs B. to do a lawful act, and B. in doing it commits a nuisance, A. is not liable—Defendants contracted with one Ansell that he should fill in an opening in a highway made to permit a drain to be connected with a sewer—The earth was left by Ansell heaped up so as to be a nuisance, and plaintiff in driving suffered hurt—Held that defendants were not liable for Ansell's negligence. (22 L. J., C. P., 81; 13 C. B., 182; 20 L. T., (O. S.), 208.)

353. 1873. *Pretty v. Bickmore*. Insecure coal-plate in a public footway—Accident—Premises under lease, lessee to repair—Landlord held not liable—"Metropolis Local Management Act, 1855," § 102, held not to affect the question. (L. R., 8 C. P., 401; 28 L. T., 704.)

354. 1837. *Reg. v. Dunraven (Earl of)*. Indictment for obstructing a highway by erecting a building—No real inconvenience experienced by the Public, the chief sufferer being a private individual who was debarred from access to his premises, and who, it was admitted, had his private remedy—In such a case the Court will discharge an Indictment on a merely nominal fine when the nuisance has ceased; for instance, by the opening of a substituted road—But such a Rule will not be made *absolute* in the first instance. (W. W. & D., 577.)

355. 1860. *Reg. v. Longton Gas Co.* Obstruction to highway—Commissioners for Lighting possessed powers to lay down mains for public lighting but not for private supply—Held that a Company which, possessing no Parliamentary powers, had under the authority of the Commissioners properly laid down mains for public purposes, had no power to obstruct the highways for the purpose of supplying private persons. (29 L. J., M. C., 118; 2 E. & E., 651; 8 Cox, C. C., 317; 2 L. T., 14.)

356. 1703. *Reg. v. Watts*. Where a house is so ruinous that it is likely to fall down on a highway the occupier may be indicted for a nuisance, irrespective of the owner—A tenant at will held liable. (1 Salk., 357; [R. v. Watson] 2 Ld. Raym., 856.)

357. 1864. *Wettor v. Dunk*. If an excavation has been made so near a highway since its adoption as to create or increase danger to the Public, and an accident happens thereby, the person making the excavation is not absolved from liability by reason that a statutory obligation to fence the highway is imposed upon other parties who have neglected to do so. (4 F. & F. 298.)

358. 1862. *Williams v. Adams*. "Highway Act, 1835," § 73—Placing rubbish on a road by an adjacent owner—Defence that as he claimed the road, subject only to private rights of way, the Justices had no jurisdiction on the ground that a question of title to land was involved—Held that the Justices had

jurisdiction to try whether the road was a highway, or only an occupation road. (31 L. J., M. C., 109; 2 B. & S., 312; 5 L. T., 790.)

359. 1868. *Wilson v. Halifax, Mayor*. "Towns Improvement Clauses Act, 1847," § 83: "Public Health Act, 1848," §§ 68 and 139—An ancient open water-course alongside a public foot-path is not a "hole or other place near a street" which a Local Board is bound to fence—Duty as to erection of posts or rails—The alleged cause of Action being the continued non-performance of a duty imposed by the "Public Health Act, 1848," and therefore a thing "done or intended to be done" under the Act, the defendants were entitled to notice of Action. (37 L. J., Ex., 44; L. R., 3 Ex., 114; 17 L. T., 660.)

(3.) BY CATTLE AND ANIMALS, INCLUDING VEHICLES, RIDING, AND DRIVING.

360. 1832. *Boss v. Litton*. A foot-passenger, though infirm, has a right to walk in a carriage-way if he pleases—It is a way for foot-passengers as well as for carriages—A foot-passenger is entitled to the exercise of reasonable care on the part of drivers using the road—Damages awarded for personal injury. (5 C. & P., 407.)

361. 1871. *Bothamley v. Danby*. "Highway Act, 1864," § 25—Sheep depastured by right on a fen barrier bank along the top of which there was a public highway—Such bank held not to be uninclosed land within the Section, and therefore a Conviction for allowing the sheep to stray on the metalled part of the highway was good. (24 L. T., 656.)

362. 1809. *Butterfield v. Forrester*. A person who is injured by falling against an obstruction in a highway cannot maintain an Action if it appears that he was riding with great violence and want of ordinary care, but for which he might have seen and avoided the obstruction. (11 East, 60.)

363. 1860. *Cotton v. Wood*. Accident to Foot-passenger—Action under "Lord Campbell's Act," § 9 & 10 Vict., c. 93—Foot-passengers crossing a highway are bound to take care to avoid vehicles; and the drivers of vehicles are bound to take care to avoid foot-passengers—To enable a plaintiff to recover there must be proof of well-defined negligence, not merely some proof of negligence—Where the evidence is equally consistent with either negligence or no negligence it is not competent for the Judge to leave it to the Jury to find either alternative, but it must be taken to be no proof. (29 L. J., C. P., 333.)

364. 1869. *Freestone v. Caswell*. "Highway Act, 1864," § 25—A highway with mere strips of green-sward along its sides on which there exists a right of depasturing cattle is not a highway passing over "any common, or waste, or uninclosed, land"—As to liability for straying cattle, *Golding v. Stocking* followed. (L. R., 4 Q. B., 519; 10 B. & S., 351; 20 L. T., 918.)

365. 1864. *Gerring v. Barfield*. "Highway Act, 1835," § 72—Use by an Innkeeper for 20 years of a strip of highway as a stand for the vehicles of his customers on market-days—Such user held no defence to a charge of obstructing the highway. (16 C. B., (N. S.), 597; 11 L. T., 270.)

366. 1869. *Golding v. Stocking*. "Highway Act, 1864," § 25—Though a man possess a right of pasturage on the sides of a highway, he will nevertheless become liable to a penalty under the Section if his cattle stray on the metalled part. (38 L. J., M. C., 122; L. R., 4 Q. B., 516; 10 B. & S., 348; 20 L. T., 479.)

367. 1859. *Goodwyn v. Cheveley*. Where cattle passing along a public highway stray into an adjoining field the owner must remove them within a reason-

able time; and what is a "reasonable time" is not a question of law for the Judge but a question of fact for the Jury. (28 L. J., Ex., 298; 4 H. & N., 631; 33 L. T., (O. S.), 284.)

368. 1878. *Harris v. Mobbs*. Accident to horse and cart, horse being frightened by traction engine and van improperly drawn up by the side of a highway—Action under "Lord Campbell's Act"—Verdict for the plaintiff—Motion for a New Trial to stand over, in order that the Judge before whom the case was tried might be consulted by the Court. (W. N., 1878, p. 156.)

369. 1823. *Jones v. Owen*. "Highway Act, 1773," § 60 [Repealed]—Offence committed in view of a Justice—Owner's name concealed by driver sitting in front of board—Forcible removal of driver from his seat by Justice, held a trespass giving driver a right of Action against the Justice. (1 L. J., (O. S.), K. B., 139; 2 D. & R., 600.)

370. 1868. *Lawrence v. King*. "Highway Act, 1864," § 25—Cattle, &c., lying about a highway are within the prohibition even if in charge of a keeper—The Legislature in replacing § 74 of the "Highway Act, 1835," by a new enactment from which the words "without a keeper" have disappeared must be taken as having intended to prohibit cattle, &c., from lying about a highway at all. (37 L. J., M. C., 78; L. R., 3 Q. B., 345; 9 B. & S., 325; 18 L. T., 356.)

371. 1859. *Lloyd v. Ogleby*. The mere fact of a man's driving on the wrong side of a road is no evidence of negligence, in an Action brought against him for running over a foot-passenger who was crossing the road. (5 C. B., (N. S.), 667.)

372. 1866. *Morris v. Jeffries*. "Turnpike Amendment Act, 1823," 4 Geo. IV., c. 95, § 75—Animals grazing on the side of a Turnpike road in charge of, and actually under the control of, a keeper are not liable to be impounded as "wandering, straying, or lying"—The presence of a keeper is not, however, conclusive—The matter is one for Justices on the evidence. (35 L. J., M. C., 143; L. R., 1 Q. B., 261; [Norris v. J.] 13 L. T., 629.)

373. 1867. *Reg. v. Pratt*. "Highway Act, 1835," § 72—This prohibition as to riding on footways applies only to such footways as are by the side of a road and not to footways in general. (37 L. J., M. C., 23; L. R., 3 Q. B., 64; 32 J. P., 256.)

374. 1812. *Row v. Cross*. Obstruction of street by vehicles standing about plying for hire—Defendant found guilty on Indictment. (3 Camp., 224.)

375. 1665? *Row v. Egerly*. It is an indictable nuisance to traverse a highway with wagon carrying an excessive weight drawn by an unusual number of horses whereby the highway is damaged. (3 Salk., 183.)

376. 1858. *Robertson v. Birkett*. "Highway Act, 1835," § 77—A wag was driving two carts and the horse of the hinder cart was attached by a rope from its head, which, after being passed over the back of the first cart was fastened to the body of the first cart about the centre and the horse's head was drawn close up to the back of the first cart—Held that the Statute had not been infringed. (7 W. R., 50; 32 L. T. (O. S.), 105.)

377. 1863. *Shorborn v. Wells*. 2 & 3 Vict., c. 47, § 54—Cattle grazing by the side of a highway are not necessarily "turned loose" because not held by halters, provided there be some one in charge of them. (Metrop.) (32 L. J., M. C., 179; 3 B. & S., 784; 8 L. T., 274.)

378. 1863. *Sowerby v. Wadsworth*. A right of highway does not include a right to race—A person who had been a party to a "hurdle-race" held jointly liable for trespass for fixing hurdles on some ground, although he did not take part in that particular act. (3 F. & F., 734.)

379. 1875. *Wemyss v. Hopkins*. A conviction

under the "Highway Act, 1835," § 78, at the instance of the Police is a bar to proceedings under 24 & 25 Vict., c. 100, § 42, at the instance of the person injured. (44 L. J., M. C., 101; L. R., 10 Q. B., 378; 33 L. T., 9.)

380. 1876. *Williams v. Evans*. "Highway Act, 1835," § 78—Conviction for furious riding—Held that though the word "rider" is not mentioned in the penal clause of the Section, it must, nevertheless, be held to be included in the word "driver"—Conviction affirmed. (L. R., 1 Ex. D., 277; 35 L. T., 864; 41 J. P., 151.)

381. 1852. *Williams v. Richards*. To sustain an Action for an injury caused by negligent driving the injury must be caused by the negligence of the defendant only, without any contributory negligence on the part of the plaintiff—A person driving over a foot-crossing at the mouth of a street must drive slowly, cautiously, and carefully; but a foot-passenger must also use due care and caution in going upon such crossing, so as not to get amongst carriages and thus receive injury. (3 C. & K., 81.)

(4.) BY FIRES AND SMOKE, INCLUDING FIREARMS, STEAM ENGINES, AND GAMES.

382. 1877. *A. G. v. Mous*. Information by County Surveyor to restrain builders from taking traction engines over a bridge not capable of bearing great weights—Injunction granted. (Times, July 17, 1877.)

383. 1878. *Body v. Jeffery*. "Locomotives Act, 1861," § 3—Wheels with 18-inch tires fitted with shoes 9½ inches wide and 3 inches broad arranged alternately on each edge of the tire and overlapping in the centre held not to be in conformity with the Act, though there was always a bearing surface of 9 inches on the road—To comply with the Act there must be one uninterrupted pressure of 9 inches from side to side of the wheel and that pressure must be in one continuous band throughout the whole circumference of the wheel except so far as the necessary joints in the material might render absolute continuity impossible. (47 L. J., M. C., 69; L. R., 3 Ex. D., 95; 38 L. T., 68; 42 J. P., 121.)

383a. 1878. *Edmunds v. Savin*. "Locomotives Act, 1861," § 3—Whether the wheels of a traction engine are fitted with "shoes" within the meaning of the Statute is a question of fact for the Justices to determine—Case remitted to be re-stated. (In the Q. B., May, 1878, ms.)

384. 1862. *Harrison v. Leaper*. "Highway Act, 1835," § 70—Steam thrashing-machine, lent for hire to a farmer under the superintendence of the owner's man, erected within 25 yards of a highway, contrary to the Statute—Conviction of owner held bad, there being nothing to show that the machine was placed in its illegal position by the owner's direction. (5 L. T., 640.)

385. 1863. *Mayhem v. Wardley*. A person enjoys an easement in the soil of a highway for lawful purposes only, and when he uses it for unlawful purposes (e. g., for taking game) he becomes a mere trespasser—Firing at game from a highway is a trespass in pursuit of game within 1 & 2 Will. IV., c. 32. (14 C. B., (N. S.), 550; 2 N. R., 325; 8 L. T., 504.)

386. 1863. *Pappin v. Maynard*. "Highway Act, 1835," § 72—A game which consisted of one man representing a stag being pursued by others, held within the prohibition of the Act. (9 L. T., 327.)

387. 1875. *Pease v. Paver*. "Highway Act, 1835," § 72—Damage to highway by mining operations—Defence that the lessees were legally entitled to carry on their mining operations irrespective of the effect thereof on the highway—Conviction of lessees quashed. (39 J. P., 407.)

388. 1873. *Reg. v. Kitchener*. "Locomotives Act, 1861"—Engine breaking down a Bridge—Neglect of owner of engine to repair—Held that § 7 does not apply to a County bridge—Owner held not liable—The protection of County bridges is provided for by §§ 6 and 13. (43 L. J., M. C., 9; L. R., 2 C. C. R., 88; 29 L. T., 697.)

389. 1863. *Smith v. Stokes*. "Highway Act, 1835," § 70—A portable steam-engine is within the Act—"Erection" need not be of a permanent character, and the engine need not be in any way fixed in the soil. (32 L. J., M. C., 199; 4 B. & S., 84; 8 L. T., 425.)

390. 1871. *St. Mary's, Newington, Vestry v. Jacobs*. "Highway Act, 1835," § 72—Premises used by owner for the storage of heavy machinery, the removal of which to and from the premises was attended with injury to the footway—Summons under § 72 dismissed—Held that the Magistrate was justified in dismissing the summons if of opinion that the defendant, as successor in title of the original owner, was not exceeding his reasonable rights of ownership, for an owner of land who dedicates part thereof as a public way parts with no other right than a right of passage to the Public, and he may enjoy all rights not inconsistent with dedication. (41 L. J., M. C., 72; L. R., 7 Q. B., 47; 25 L. T., 800.)

391. 1866. *Stinson v. Browning*. "Highway Act, 1835," § 72—To constitute the making of a fire within 50 ft., &c., an offence within § 72, it must be shown that the act is to the injury of the highway or to the injury, interruption, or danger of persons travelling thereon—The whole passage in the Section must be read together. (35 L. J., M. C., 152; L. R., 1 C. P., 321; 1 H. & R., 263; 13 L. T., 799.)

392. 1877. *Stringer v. Sykes*. "Locomotives Act, 1861"—Engine fitted with shoes on its wheels laid obliquely—Held that the bearing surface not being continuous the Statute was not complied with—Conviction affirmed. (46 L. J., M. C., 139; L. R., 2 Ex. D., 240; 36 L. T., 152; 41 J. P., 296.)

393. 1861. *Watkins v. Reddin*. "Locomotives Act, 1861"—Accident to a coachman—Action against owner of a traction engine held maintainable—Such an engine is calculated by its noise and appearance to frighten horses—*Semble*, that *scienter* on the part of owner is immaterial. (2 F. & F., 629.)

394. 1860. *Wooley v. Corbishley*. "Highway Act, 1835," § 72—Game of football in a public highway—Evidence of a Constable that he saw the game and saw 2 horses frightened held sufficient to sustain a conviction. (24 J. P., 773.)

(5.) BY TREES AND WATER.

395. 1862. *Croasill v. Ratcliffe*. "Highway Act, 1835," § 72—Interference with footway by dripping of rain-water from eaves of buildings—Occupier held not guilty of an "obstruction." (5 L. T., 834.)

395a. 1838. *Frompton v. Taffin*. "Highway Act, 1835," § 65—Refusal to obey an Order of Justices to lop trees which were ornamental—Injunction granted to restrain Surveyors from interfering with the trees pending an appeal to Justices at Quarter Sessions under § 105—Justices have no summary power to cut down or lop trees planted for ornament or shelter. (2 Jur., 986.)

396. 1844. *Jenney v. Brook*. "Highway Act, 1835," § 65—Action of Trespass against a Surveyor—Order of Justices on an owner to cut, prune, and plash certain hedges and trees which excluded sun and wind from a highway and caused an obstruction held void for uncertainty as regards the cutting (because it did not specify in what manner or to what extent), but good as to the removal of an obstruction—On default

by owner Surveyor executed the work—Held that the Order so far as it was good protected the Surveyor; as to the trees it was bad because it did not negative that they were planted for ornament, or for shelter to a hop-ground, which trees are excepted by § 65—A statement that the hedges, &c., were growing on the plaintiff's farm and on the side of the carriage-way was equivalent to a statement that he was the owner of the land adjoining the carriage-way, and a sufficient averment—*Venire de novo* awarded. (13 L. J., Q. B., 376; 6 Q. B., 323; 1 New Sess. Cas., 323.)

397. 1870. *Turner v. Ringwood H. B.*—"Highway Act, 1862," § 17—Road set out 50 ft. wide under an Inclosure Allotment—Width of only 25 ft. actually used as road—Trees growing for 25 years alongside the hard road, within the 50 ft. limits—Held that the public were entitled to the whole 50 ft. and not merely to the *via trita*: also that the adjacent owner had no rights over the soil to entitle him to an Injunction to restrain the cutting of the trees; but, *semble*, that though the Highway Board was entitled to remove the trees as obstructions to road, it had no power as against owner of soil to sell the timber. (L. R., 9 Eq., 418; 21 L. T., 745.)

398. 1875. *Walker v. Horner*. Free passage of a bridle-way obstructed by reason of landowner allowing trees to grow over it—Such an obstruction held not to be "wilful," so as to be within the "Highway Act, 1835," § 72. (L. R., 1 Q. B. D., 4; 33 L. T., 601.)

399. 1840. *Whitmarsh, Ex parte*. "Highway Act, 1835," § 65—Application for *Mandamus* to Justices to issue Warrant for levy of expenses of cutting a hedge—Such an application will not be granted unless a demand of the expenses has been made of the person sought to be charged, and the Justices were informed of such demand. (8 Dowl., P. C., 431; 4 Jur., 823.)

(6.) LEGAL PROCEEDINGS AS TO OBSTRUCTIONS, &c.

400. 1696. *Baker v. Moore*. Loss of Tenants is a sufficient special damage to support an Action for a public nuisance, in this case the obstruction of a highway. (Cited 1 Ld. Raym., 491.)

401. 1874. *Benjamin v. Storr*. Obstruction of highway by vans—Action by occupier of adjoining house, because of the interference with his trade—In Actions for damage from a public nuisance the plaintiff must show that the injury is (1) particular and special; (2) direct, not merely consequential; and (3) substantial, not merely temporary, or evanescent—Judgment for the plaintiff. (43 L. J., C. P., 162; L. R., 9 C. P., 400; 30 L. T., 362.)

402. 1856. *Blagrove v. Bristol Waterworks Co.* Obstruction of public footway whereby plaintiff was deprived of the use of it for passing from one part of his property to another, and the time of his servants was wasted in going by a longer route to and from their work—Held that this was a good cause of Action to which it was no answer that the defendants did the acts complained of under the authority of their Act—But that it is no ground of Action that a person, by stopping up on his own land the continuation of a public footway over his neighbour's land, causes the public to trespass on other parts of his neighbour's land to the damage thereof. (26 L. J., Ex., 57; 1 H. & N., 369.)

403. 1862. *Bolch v. Smith*. A workman lawfully passing along a certain private path in a Royal dockyard accidentally fell and injured his arm owing to a shaft put up by a contractor by permission of the Government being insufficiently fenced—Held that the contractor was not liable, as the plaintiff had merely permission to use the path; no right to do so, and no obligation, for there was an alternative route—But,

alter, if the machinery had been in any way concealed from view, or in the nature of a trap. [31 L. J., Ex. 201; 7 H. & N., 736: [Bolett v. S.] 6 L. T., 158.)

404. 1738. *Chichester v. Lethbridge*. An Action will not lie by an individual for the obstruction of a highway unless he sustain a particular damage which must appear on the Record—But if the plaintiff aver that he was obstructed by a ditch and gate across a road which compelled him to go a longer way round, and that the defendant opposed him in attempting to remove the nuisance this is sufficient damage to support the Action—A general way and a private way by prescription are inconsistent and cannot be claimed together. (Willes, 71.)

405. 1842. *Davis v. Mann*. Ass tethered on highway killed by defendant's waggon—Held that though the ass might have been improperly placed where it was, the plaintiff as owner was entitled to recover, as the waggoner might by ordinary care have avoided the ass—In order to preclude a plaintiff from recovering in such a case it must be proved that he might with reasonable exertion and ordinary care have avoided the consequences of defendant's negligence. (12 L. J., Ex., 10; 10 M. & W., 546.)

406. 1850. *Dimes v. Petley*. A private individual cannot justify damaging the property of another on the ground that it is a nuisance to a public right, unless it does him a special injury. (19 L. J., Q. B., 449; 15 Q. B., 276.)

407. 1810. *Flower v. Adam*. If the proximate cause of damage be the plaintiff's unskilfulness though the primary cause be the misfeasance of the defendant he cannot recover; at least if the mischief be in part occasioned by the misfeasance of a third person, not sued—A. placed lime on a highway; dust from it frightened B's horse and he was nearly carried into contact with a passing waggon, to avoid which he turned the other way, and was upset and hurt by other rubbish placed on the road by C.—Held that B. could not recover against A. (2 Taunt., 314.)

408. 1824. *Greasley v. Codling*. Obstruction of a highway whereby plaintiff was forced to travel by a more circuitous route and could not perform so many journeys in a day as he could otherwise have done—Held that the mere fact of the delay was to him an injury sufficient to give a right of Action. (3 L. J., (o. s.), C. P., 262; 2 Bing., 263; 9 Moore, C. P., 489.)

409. 1794. *Hubert v. Groves*. Any obstruction to a highway is a nuisance, and the only remedy is an Indictment—A party obstructed cannot maintain an Action unless he experiences private and particular damage. (1 Esp., 148.)

410. 1699. *Iveson v. Moore*. No Action lies for a public nuisance except on account of special damage to the plaintiff. (1 Ld. Raym., 486.)

411. 1697. *Lodis v. Arnold*. A person who has a right to abate a public nuisance is not bound to do it orderly and with as little hurt as can be. (2 Salk., 458.)

412. 1665. *Maynoll v. Saltmarsh*. Action for obstructing a highway, whereby the plaintiff was prevented from moving his corn, which was consequently spoiled—Held, a sufficient special damage to entitle him to a verdict. (1 Keble, 847.)

413. 1691. *Pain v. Patrick*. An Action on the Case will not lie for hindering a passage in a common highway unless some special damage ensue—The proper remedy is by Indictment. (3 Mod., 289.)

414. 1856. *Petrie v. Nuttall*. A verdict of "Guilty," and Judgment thereon, in an Indictment for obstructing a highway cannot be pleaded as an estoppel in an Action brought by the party convicted against a third person for using the way—An estoppel must be mutual, and a verdict between two parties can be no estoppel as against other persons. (25 L. J., Ex., 200; 11 Ex., 569.)

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415. 1861. *Reg. v. Bowles*. Indictment for obstructing a highway—The trial of such an Indictment will not be postponed at the instance of the defendant until after the trial of an Action against him by the prosecutor for injury arising out of the same act of obstruction. (2 F. & F., 371.)

416. 1861. *Reg. v. Field*. Trial of an Indictment for obstructing a highway—At the close of the examination of the defendant's witnesses his Counsel claimed the right to sum up his evidence—Held that no such right existed. (2 F. & F., 498.) [See now 28 Vict., c. 18, § 2.]

417. 1838. *Reg. v. Fisher*. Obstruction of a highway in a town—Road stated in Indictment to run from the town to H.—Therefore the town must be excluded, and the nuisance being within the town there was a variance between the Indictment and the proof, and defendant was acquitted. (8 C. & P., 612.)

418. 1860. *Reg. v. Johnson*. Obstruction of highway—Indictment for a nuisance—Verdict "Not Guilty"—After such a verdict a new trial will not be granted on the ground that the verdict is against the evidence, even though the Judge states that he is dissatisfied. (29 L. J., M. C., 133; 2 E. & E., 613; 1 L. T., 513.)

419. 1878. *Reg. v. Lancashire JJ.* "Highway Act, 1835," §§ 72 and 105—Alleged obstruction of highway—Refusal of Justices to convict—Refusal of Quarter Sessions to hear an appeal against the dismissal of the complaint on the ground that the informer was not a party aggrieved—*Mandamus* to Sessions to hear the appeal refused. (*Times*, July 2, 1878.)

420. 1864. *Reg. v. Maybury*. Indictment for continuing an obstruction on a highway—Trial thereof removed by *Certiorari* and sent to the Assizes—A plea of *autrefois convict* on a former Indictment for the same nuisance not allowed to be added even by consent, the Judge having no jurisdiction to receive it—The nuisance (a wall) proved to be still standing—Held that the Judgment on the previous Indictment was conclusive, and that there must be again a verdict of "Guilty." (4 F. & F., 90.)

421. 1862. *Reg. v. Paget*. Indictment for obstructing a highway—Removal of obstruction before trial—*Per Wightman, J.*:—In such a case "there is nothing to try"—Verdict of "Not Guilty" by consent, the defendant undertaking not to renew the obstruction. (3 F. & F., 29.)

422. 1854. *Reg. v. Russell*. Indictment for obstructing a navigable strait—Held that no new trial could be granted in such a case—Where a proceeding, though criminal in form, is really for the trial of a civil right a new trial after acquittal will be granted if the Jury have been clearly misdirected or have returned a perverse verdict—But the Court will not interfere if a real offence is charged, or merely because the Judge happened to use an inaccurate expression, if the Jury have not been misled. (23 L. J., M. C., 173; 3 E. & B., 942.)

423. 1854. *Reg. v. Sturge*. Indictment for obstructing a footway from A. to C.—Evidence that there was a way from A. to C. but that it passed through an intermediate point B.; was a carriage-way from A. to B. and a footway from B. to C. only—The obstruction was between B. and C.—Held that assuming this to be a misdescription the Indictment might, under 14 & 15 Vict., c. 100, § 1, be amended at the trial by substituting a description of the way as a footway leading from B. to C. (23 L. J., M. C., 172; 3 E. & B., 734.)

424. 1717. *Rex v. Hamond*. In Indictments for nuisances on highways it is not necessary to specify the *termini*—A navigable river is esteemed a highway. (Strange, 44; 10 Mod., 382.)

425. 1836. *Rex v. Soule*. Indictment for obstructing a highway—A defendant applying to remove an Indictment from the Sessions by *Certiorari* on the

plea that difficult points of law will arise must specify in his Affidavit grounds of such difficulties—A statement that the obstruction consists of valuable buildings of old date is insufficient. (5 A. & E., 539; 1 N. & P., 28; 5 Dowl., P. C., 435.)

426. 1796. *Rea v. Williamson*. 5 Will. & M., c. 11, § 3—A person who has used a common footway for some years before it was stopped up, and who prosecutes an Indictment, is a party grieved within the above Statute so as to be entitled to have Costs awarded to him. (7 T. R., 32.)

427. 1798. *Rea v. Yorkshire, W.R., JJ.* On an Indictment for a nuisance in erecting a wall across a road (not for continuing the nuisance) it is no objection to the sufficiency of the Judgment that it does not adjudge that the nuisance be abated. (7 T. R., 467.)—*Secus* where it is stated in the Indictment that the nuisance is an existing one. (S. C., *nom. Rea v. Stead*; 8 T. R., 142.)

428. 1878. *Smith v. West Derby L.B.* Sewers laid along a road by the Contractor of a Board—Subsequent subsidence of the road—Accident to a vehicle—Held that the Board was liable for the negligent restoration

of the road in its joint capacity as Highway Authority and Sewer Authority. (38 L. T., 716.)

429. 1867. *Winterbottom v. Derby (Earl of)*. In an Action for obstructing a highway the plaintiff must show substantial damage peculiar to himself—The mere fact that he was forced to turn back and proceed by a less direct route, or to remove the obstruction, and that he was delayed and put to expense in doing so, is not sufficient—From evidence of user extending back during living memory, during which time the land was under lease, a Jury may presume dedication anterior to the lease. (36 L. J., Ex., 194; L. R., 2 Ex., 316; 16 L. T., 771.)

430. 1830. *Wordsworth v. Harley*. "Highway Act, 1773," § 81 [Repealed]—Action of Trespass against Surveyor for severing land from a close and erecting a dwarf boundary wall and adding severed portion to public road—Wall subsequently raised by Surveyor—Held that the offence was complete by the erection of the wall in its original state, and that the limitation of time for bringing an Action ran from the date when the severance was first completely effected. (9 L. J., (O. S.), M. C., 50; 1 B. & Ad., 391.)

CHAPTER VII.

REPAIR OF HIGHWAYS.

(1.) LIABILITY TO REPAIR.

i. In Parishes and Townships.

431. 1698. *Anon.* (1 Ld. Raym., 725.) The inhabitants of every Parish ought to repair the highways—And therefore, if by Statute particular persons are chargeable and they become insolvent, the Justices may put the charge on the rest of the inhabitants. (1 Ld. Raym., 725.)

432. 1671. *Austin's Case*. *Per Hale, J.*:—"If there be a public way of common right the Parish is to repair it, unless a particular person be obliged by prescription or custom." (1 Ventr. 189.)

433. 1860. *Bartlett, Ex parte*. To give Justices jurisdiction to make an Order to repair a highway or to indict the Parish where the liability to repair is denied, two facts must be proved: the road must be a highway, and it must be out of repair—Where the liability is denied and an Indictment is preferred under §§ 94-5, and a verdict of "Not Guilty" found, the Justices are not bound to direct a second Indictment on a fresh Information. (30 L. J., M. C., 64; 3 E. & E., 253; [Reg. v. Somersetshire, JJ.] 3 L. T., 316.)

434. 1843. *Little Bolton Inhabitants v. Reg.* Local Paving Act exonerating Turnpike Trustees from repairing roads, and making new provision for such repairs, and also exonerating from contribution to repairs of highways all persons rated under the Act—Unfinished street forming part of an old road, as to which the liability of repairs under the Act did not as yet attach—Held that the inhabitants were liable notwithstanding their exoneration, and that they might be indicted for non-repair. (12 L. J., M. C., 104.)

435. 1878. *Reg. v. Ardsley Inhabitants*. Parish

divided into Townships—Each Township liable by immemorial custom for its own roads except that the road indicted had for some time been repaired by an adjoining Township—Held that this system must cease, for that it must be presumed that it had existed under some arrangement between the two townships, and that no such arrangement could be binding unless there was evidence of some adequate consideration. (47 L. J., M. C., 65; L. R., 3 Q. B. D., 255; 38 L. T., 71; 42 J. P., 262.)

436. 1865. *Reg. v. Ashby Folville Inhabitants*. Indictment against Parish A. for non-repair—Plea that Parish G. from time immemorial and in consideration of levying certain Rates on lands in A. adjacent to the highway had repaired and ought to repair such highway—Replication, that the agreement between the two Parishes purported to have been determined by notice—Held that the consideration was insufficient to support the alleged liability of G., as neither could the consideration be enforced, nor could it be immemorial, for it must have arisen since the Statutes creating the power to levy Rates—That the alleged liability amounted, therefore, to no more than an arrangement between the two parishes which could be terminated at any time—*Semble*, that a Parish cannot be bound by prescription to repair highways in another Parish. (35 L. J., M. C., 154; L. R., 1 Q. B., 213; 7 B. & S. 277.)

437. 1843. *Reg. v. Barnoldswick Inhabitants*. On an Indictment against a Parish for non-repair of a highway it is not essential, in support of a plea that the several Townships in it have been accustomed from time immemorial to repair their own highways, to show by direct affirmative evidence that there have been ancient highways in each of the Townships—The

existence and several repair of ancient highways in one Township may be inferred from their existence and several repair in the other Townships. (12 L. J., M. C., 44; 3 G. & D., 545; 4 Q. B., 490.)

438. 1877. *Reg. v. Central Wingland Inhabitants*. "Highway Act, 1862," § 32—Indictment for non-repair of a highway in an Extra-parochial place—Held that § 32 only made the place a Highway Parish liable to be included in a Highway District, and did not impose on it all the Common Law liabilities of a Parish in respect of highways, and therefore that it could not be indicted. (46 L. J., M. C., 282; L. R., 2 Q. B. D., 349; 36 L. T., 798; 41 J. P., 711.)

439. 1866. *Reg. v. Farrer*. "Highway Act, 1862," §§ 18–19—Summons for non-repair—Justices have no jurisdiction to order an Indictment where it is *bonâ fide* denied that the road is a highway, and the liability to repair the road if it is proved to be a highway is not denied. (35 L. J., M. C., 210; L. R., 1 Q. B., 558; 7 B. & S., 554; 14 L. T., 515.)

440. 1841. *Reg. v. Heage Inhabitants*. Indictment charging a Township with a customary liability to repair all public roads within its limits not adding any such words as "which but for such custom would be repairable by the Parish at large"—Indictment held good on the ground that there might be such a custom as alleged, and that if there were any roads repairable *Ratione tenuræ* or otherwise it was for the defendants to show it as a matter of evidence. (10 L. J., M. C., 145; 1 G. & D., 548; 2 Q. B., 128.) [But see *Reg. v. Colling*.]

441. 1859. *Reg. v. High Halden Inhabitants*. A Parish bound to repair a road must make it reasonably passable for the ordinary traffic of the neighbourhood at all times of the year, but is not necessarily bound to make it hard. (1 F. & F., 678.)

442. 1843. *Reg. v. Midville Inhabitants*. The *prima facie* liability to repair roads attaches only to a Parish and not to any Township or other sort of district, even though it be no part of any Parish—Roads set out in a tract of Extra-parochial and uncultivated land, part of a fen, under Local Acts, held not repairable under the circumstances by the Township, the Local Acts which instituted a *quasi* parochial machinery not mentioning the subject of highways. (3 G. & D., 522; 4 Q. B., 240.)

443. 1869. *Reg. v. Odell Inhabitants*. "Highway Act, 1862," § 18—Justices have no jurisdiction to order a Board to repair a highway if the Waywarden deny that the road is such—Though the denial if not made *bonâ fide* will not oust the jurisdiction of the Justices if they are satisfied that the road is a highway yet their decision that the denial is not made *bonâ fide* is not conclusive and may be reviewed by the Superior Court. (21 L. T., 556.)

444. 1840. *Reg. v. Oxford & Witney Turnpike Trustees*. To apply for a *Mandamus* to repair a road is not a proper proceeding; the Parish should be indicted, and it can then have its remedy under the "Turnpike Act, 1822," § 110—It was so held in a case where the question was which of two parties were liable to the repair under Local Acts. (12 A. & E., 427; 4 P. & D., 154.)

445. 1875. *Reg. v. Rollett*. Hamlet which had never in the memory of man been liable to Highway Rates, &c.—No public roads in the hamlet—Held that these circumstances were not sufficient to establish a custom exempting the occupiers of the hamlet from contributing to the repairs of highways outside its limits but within the Township of which it formed part. (L. R., 10 Q. B., 469; [Rollett v. Corringham] 32 L. T., 769.)

446. 1836. *Reg. v. Edgo Lane Inhabitants*. Trustees empowered to make a road which, when made, was to be repairable by the Public—Portion of the road ending at a highway made and used for 26 years—

Remainder unfinished—Held that no duty to repair lay upon the inhabitants—*Reg. v. Cumberworth* followed. (5 L. J., M. C., 91; 4 A. & E., 723; 6 N. & M., 81.)

447. 1831. *Reg. v. Edmonton Inhabitants*. A Parish is not bound to repair a way used by the Public and repaired by the Parish for more than 20 years if there be no owner who could dedicate it, and the repairs be shown to have been begun and continued under a mistaken notion as to the liability of the inhabitants to repair—But the inhabitants are bound by such repairs if made with a full knowledge of the facts and with the intention of taking upon themselves the public duty—*Semble*, that roads set out under Inclosure Acts do not by presumption of law belong to the adjacent owners. (1 Mood. & Rob., 24.)

448. 1771. *Reg. v. Great Broughton Inhabitants*. By Common Law and of common right the inhabitants of the Parish at large are bound to repair the highways, and an Indictment against a Division of a Parish for non-repair must prove liability. (5 Burr., 2700.)

449. 1814. *Reg. v. Haslingfield Inhabitants*. Indictment for non-repair—Plea that though as a matter of fact the Parish had repaired both before and since a certain Inclosure Award yet by virtue of that Award the road was really within an adjoining Parish—Held that the Award was not available as evidence of the fact stated, in the absence of proof that certain formalities in the way of notices had been duly complied with before the Award was made. (2 Maule & S., 558.)

450. 1820. *Reg. v. Hatfield Inhabitants*. Where, in an Indictment for the non-repair of a road, the prescription proved was that its inhabitants had been immemorially used to repair all roads within it which but for such usage would have been repairable by the inhabitants at large—Held that this placed the Township in the position of a Parish, and that it was necessary for the defendants to prove with certainty that some other persons were liable, in order to exonerate themselves from their liability. (4 B. & Ald., 75.)

451. 1823. *Reg. v. Kingsmoor*. A Parish is liable as of common right to repair all highways therein, but an Indictment will not lie against a district called an Extra-parochial hamlet, for non-repair of a highway therein, unless some special ground of liability to repair is alleged. (2 B. & C., 190; 3 D. & R., 398.)

452. 1834. *Reg. v. Landulph Inhabitants*. *Semble*, that where a public way crosses the bed of a river, which washes over it at every tide leaving a deposit of mud, the Parish is not bound to make it good—Where a stream separates two parishes, the *medium filum* is presumptively the boundary. (1 Mood. & Rob., 393.)

453. 1833. *Reg. v. Leake Inhabitants*. A Parish is bound to repair all roads within it, dedicated to, and used by, the public although there be no formal adoption of such roads—Where land is vested in Trustees for certain public purposes they may dedicate the surface as a highway provided such use be not inconsistent with the purposes for which the land is vested in them—Material excavated in cutting a drain formed into an embankment on a strip of land primarily purchased for drain purposes—Held that it was competent for the Trustees to dedicate the surface of such bank as a public Highway—*Quære*, could one act of repair by Parish be construed as evidence of adoption? (5 B. & Ad., 469; 2 N. & M., 583.)

454. 1818. *Reg. v. Netherthong Inhabitants*. Where a highway is formed under a Local Act and passes through a Township whereof the inhabitants are by prescription bound to repair all roads within it, and the road is placed under the management of Trustees, with a power to collect tolls to be applied to the repairs,

if the way be out of repair the Parish (or Township) are the only persons liable to be indicted, but they may after conviction seek for relief against the Trustees under 13 Geo. III. c. 84, § 33. [Repealed.] (2 B. & Ald., 179.)

455. 1788. *Reg. v. Penderderryn Inhabitants*. None but the parish at large being liable of common right to repair highways, an Indictment for non-repair against part of a Parish is bad unless it show expressly how such part became liable. (2 T. R., 513.)

456. 1837. *Reg. v. Scarsbrick Inhabitants*. Township A., in a Parish all the Townships in which were liable by custom to repair their own highways, indicted for non-repair—Defence that Township B. was liable—In proof of this plea an agreement produced dated 1591 and made between the owners of the soil of the two Townships by which the owner of B. agreed to repair that part of the road in A. which was the subject of the Indictment, and a lawyer was to be chosen to make further assurance for the performance of the agreement—Proof also that the road had been repaired in conformity with the agreement until within a short time of the trial—This evidence held not sufficient for a Jury to infer the existence of an Instrument to bind the owner of B., and persons claiming through him, to repair, assuming that such an instrument could have been made so as to exonerate the inhabitants of A. (6 L. J., M. C., 103; 6 A. & E., 509; 1 N. & P., 582; W. W. & D., 246.)

457. 1787. *Reg. v. Sheffield Inhabitants*. If the inhabitants of a Township bound by prescription to repair the roads within the Township be expressly exempted by the provisions of a Road Act from the charge of repairing new roads to be made within the Township that charge must necessarily fall on the rest of the Parish—By the general law of the land the Parish at large is *prima facie* bound to repair all highways lying within it unless by prescription they can throw the *onus* on particular persons by reason of their tenure. (2 T. R., 106.)

458. 1837. *Reg. v. Witney Inhabitants*. Inhabitants will not be discharged from an Indictment for non-repair until it is ascertained whether the repairs effected will stand a winter's wear, notwithstanding a favourable Certificate from Justices. (5 Dowl., P. C., 728; W. W. & D., 381.)

459. 1754. *Vennor, Ex parte*. Where a new road is made by competent authority, *e.g.* by Statute, or by a Writ of *ad quod damnum*, and the Parish is to be at no further expense with regard to the old one, the Parish and not the owner of the land must repair the new road, unless the Jury under the Writ impose the duty on the owner suing for the Writ; or the new road lies in another Parish. (3 Atkyns, 766.)

(ii.) *Liability Ratione Tenure.*

460. 1843. *Reg. v. Bamber*. Indictment for non-repair of a highway, alleging liability *Ratione tenure*—Special verdict finding that the defendant's land adjoined the sea; that anciently a highway existed over this land and had been repaired by defendant's predecessors; that within living memory the sea had encroached and covered the highway; that defendant's predecessors had gradually shifted the line of the highway and had appropriated other land and that they had always repaired such new highway; that the highway mentioned in the Indictment was part of the new highway which passed over land totally distinct from that occupied by any part of the ancient way; that the sea had recently washed away part of the highway alleged to be out of repair and that what remained of the more modern road was too narrow for a passage and was bounded by a precipitous bank—Held that the defendant's liability *Ratione tenure*

must be deemed discharged. (13 L. J., M. C., 13; Davis. & Mer., 367; 5 Q. B., 279.)

461. 1839. *Reg. v. Beeby*. Indictment for non-repair, *Ratione tenure*—Ancient Deed put in by defendant, being an agreement between certain inhabitants of the Parish and a former owner of defendant's land whereby the said inhabitants gave to the said owner the land in consideration of his repairing an existing highway: the grantee covenanted to repair it, and it was stipulated that if through his neglect the Parish were indicted, there should be a right of re-entry, and the agreement should be void—Held that this deed did not constitute a liability *Ratione tenure*—*Quere*, whether a liability to repair, *Ratione tenure*, must be immemorial?—*Per Denman, C. J.*:—"Such a liability might under some circumstances be newly created." (8 L. J., M. C., 38.)

462. 1874. *Reg. v. Bradfield Inhabitants*. Land set out under an Inclosure Act for a private road to be repaired by the adjoining landowners—User by the Public—Indictment against Parish for non-repair—Defence, repairable *Ratione tenure*—Held that this plea might be rebutted by evidence of public user sufficient to support a presumption of dedication in the ordinary way. (43 L. J., M. C., 155; L. R., 9 Q. B., 552; 30 L. T., 700.)

463. 1841. *Reg. v. Mizen*. An Indictment for non-repair of a highway in Parish A., alleging the liability by reason of the tenure of certain lands in such Parish is not supported by proof of liability to repair a way extending through A. and other Parishes by reason of the tenure of a farm made up of lands in A. and in such other parishes. (2 Mood. & Rob., 382.)

464. 1849. *Reg. v. Perkins*. "Highway Act, 1835," § 58—The proviso only applies to cases where a boundary runs along a highway and where the liability to repair is not at Common Law but *Ratione tenure* or *clausura*. (19 L. J., M. C., 105; 14 Q. B., 229; 14 L. T., (O. S.), 250.)

465. 1877. *Reg. v. Pickering Township*. Narrow highway repairable *Ratione tenure* converted into a Turnpike road and much widened—Expiration of Turnpike Trust—Held that the original private liability had been destroyed, and that the Parish was now liable. (41 J. P., 564.)

466. 1858. *Reg. v. Ramsden*. The liability to repair a highway *Ratione clausura* is in the occupier of the lands inclosed; not in the owner *quâ* owner—The liability does not attach where the way is not immemorial, or where the land inclosed has not been used for passage before the inclosure. (27 L. J., M. C., 296; E. B. & E., 949; 21 L. T., (O. S.), 327.)

467. 1849. *Reg. v. Sheffield Canal Co.* Local Act requiring a Navigation Company to make and maintain a certain road at least 7 yards wide on pain of liability to be indicted for neglect; tonnage dues leviable, and to be applied in making, &c., the road—Subsequent Act empowering the defendants (a different company) to purchase the rights of the first-named company and assume its liabilities—The road was kept in repair to a width of 12 yards by the first-named company up to the time of transfer in 1817 and by the defendants till 1846 when they reduced the width to 7 yards—Held that they were liable for the full width of 12 yards, and this notwithstanding that the dues which they were empowered to levy were insufficient to repair the road—A count alleging liability to repair *Ratione tenure* held not maintainable—*Quere*, whether there may be a liability, not immemorial, to repair *Ratione tenure*? (19 L. J., M. C., 44; 13 Q. B., 913; 4 New Sess. Cas., 25.)

468. 1841. *Reg. v. Wavertree Inhabitants*. Evidence of reputation is not admissible to show a liability in the occupiers of land to repair a road, *Ratione tenure*, that liability being a matter of a private nature. (2 Mood. & Rob., 353.)

469. 1813. *Ree v. Cotton*. Indictment for non-repair—Allegation of liability *Ratione tenuræ*—An Award under a submission by a former tenant of the premises adduced in support can neither be received as an adjudication, the tenant having no authority to bind his landlord, nor as evidence of reputation, being *post litem motam*. (3 Camp., 444.) [See 2 Mood. & Rob., 353, n., where this case is discussed.]

470. 1829. *Ree v. Hayman*. An Indictment for non-repair of a road or bridge, on a liability *Ratione tenuræ*, cannot be sustained where it appears that the tenement on which the liability is charged originated within time of legal memory. (Mood. & Mal., 401.)

471. 1674. *Ree v. St. Andrew's, Holborn*. On an Indictment for non-repair a plea of "Not Guilty" merely traverses the facts as to the state of the road—If the defence is that by prescription or *Ratione tenuræ* someone else is liable such defence must be specially pleaded. (1 Mod., 112; 3 Keble, 301; 3 Salk., 183; 1 Vent., 256.)

472. 1776. *Ree v. Wingfield*. Indictment for non-repair of a highway *Ratione tenuræ*—Fine held payable to the Surveyor and prosecutor's costs to be paid by the person indicted. (1 W. Bl., 602.)

(iii.) *By Statute including Contributions for Turnpike Roads.*

473. 1774. *Anon.* (Lofft, 465.) A power contained in an Act to continue private ways does not alter the liability of parties to repair them—Those who were liable to repair previously shall be bound still to repair. (Lofft, 465.)

474. 1870. *Brighton, &c., Turnpike Trustees v. Preston Highway Surveyors*. Local Act—Insufficiency of Funds—Contribution from Rates—Mode of calculation to be according to the requirements of each Parish and not by mileage. (39 L. J., M. C., 33; L. R., 5 Q. B., 146; 22 L. T., 92.)

475. 1865. *Brown v. Evans*. 4 & 5 Vict., c. 59—Justices cannot make an Order towards payment of repairs already done—The Justices, in the absence of proof to the contrary, need not, when making an Order under the above Act, inquire whether the Trust funds have been properly applied. (34 L. J., M. C., 101; 13 W. R., 680; 29 J. P., 341.)

476. 1870. *Bruton Turnpike Trustees v. Wincanton H. B.* Right to claim a Contribution from the Rates—Local Act providing that tolls should be applied, first to payment of costs, then of interest on mortgages, then in repairs, and lastly in payment of principal and of debts—Insufficiency of funds—Held that the Trustees might apply tolls to payment of arrears of interest in priority to repairs, and as the funds were not sufficient for both, the Justices could not order them to contribute under the "Highway Act, 1835," § 94. (39 L. J., M. C., 155; L. R., 5 Q. B., 437; 22 L. T., 605.)

477. 1843. *George v. Chambers*. "Highway Act, 1835," § 94—A single Justice has no authority to summon the Surveyor of a Turnpike road—Even if properly summoned, Justices cannot inflict Costs upon him under 18 Geo. III., c. 19, § 1 [repealed], unless they find that he is bound to repair the road on the ground that he has funds in hand for the purpose, and they must give him an opportunity of showing that he has no such funds—Nor can they order him to repair and at the same time order him to pay Costs, for in such case he has disobeyed no Order—Replevin will lie for a Distress levied under a Warrant of Justices. (12 L. J., M. C., 94; 11 M. & W., 149; 2 Dowl., (N. S.), 783.)

478. 1873. *Market Harborough Turnpike Trustees v. Kettering H. B.* Local Act—Arrears of Interest to Mortgagees—Enactment that the tolls should be applied first to pay "interest from time to time owing

in respect of money borrowed," then in repairs, and lastly in paying principal—Proposed Contribution—Held that the arrears ought not to be paid, and therefore that a contribution was not payable. (42 L. J., M. C., 137; L. R., 8 Q. B., 308; 28 L. T., 446; 37 J. P., 551.)

479. 1873. *Market Harborough Turnpike Trustees v. Market Harborough H. B.* Tolls on condition of repair of that part of road which was in a particular Parish—Tolls taken were adequate for repair of such part but not for all the roads of the Trust—Held that a Contribution was not payable by the said Parish. (42 L. J., M. C., 139; L. R., 8 Q. B., 327; 28 L. T., 660; 37 J. P., 614.)

480. 1864. *Mansby v. Hopkinson*. Local Turnpike Act—Available Funds insufficient—Held that notwithstanding that a limit was specified in the Local Act as to the amount to be spent in repairs, the approved deficiency might be made good from the Highway Rate under 4 & 5 Vict., c. 59. (10 L. T., 27.)

481. 1840. *Reg. v. Berks JJ.* 2 & 3 Vict., c. 81, § 1 [Repealed]—A Special Sessions may make an Order on a Highway Surveyor to pay a *specific* sum to Turnpike Trustees, though the Turnpike funds be not altogether exhausted. (8 Dowl., P. C., 726.)

482. 1704. *Reg. v. Clunworth Inhabitants*. A Parish is not bound to repair a road so as to make it better than it has ever been time out of mind, but as it has been usually at the best. (1 Salk., 359.)

483. 1878. *Reg. v. French*. 4 & 5 Vict., c. 59, § 1—Statute authorising the construction of various roads and empowering the Trustees to take tolls for the maintenance thereof—All the roads except one duly made—Held that the Trust was a Turnpike Trust, and that the construction of all the roads was not a condition precedent to the Trust becoming entitled to claim a contribution from the Rates—*Reg. v. York & North Midland Railway* followed. (47 L. J., M. C., 74; L. R., 3 Q. B. D., 187; 38 L. T., 385; 42 J. P., 373.)

484. 1845. *Reg. v. Hertfordshire JJ.* 4 & 5 Vict., c. 59, § 1—Order of Special Sessions directing a Parish Surveyor to pay a Contribution—A Justice who was a creditor of the Turnpike Trust held to be an interested party and disqualified from joining in the making of such an Order. (14 L. J., M. C., 73; 6 Q. B., 753; 1 New Sess. Cas., 470.)

485. 1854. *Reg. v. Hutchinson*. "Highway Act, 1835," § 94—Turnpike road out of repair—Order of Sessions on Trustees to pay Surveyors a sum for repairs held good—Trustees directed to apply their tolls in "keeping down" the interest of borrowed money, and then towards repairs, held not justified at a time when repairs were necessary in paying off old arrears of interest before defraying the repairs; but only the interest periodically falling due—Before Justices issue an Order under § 94 they must investigate the Turnpike accounts and ascertain that there is money at command to satisfy any Order which they may make. (24 L. J., M. C., 25; 4 E. & B., 200; 3 C. L. R., 104; 24 L. T., (O. S.), 141.)

486. 1860. *Reg. v. Manchester, Mayor*. Part of a footway adjoining a Turnpike road gravelled, and part paved sufficiently for practical purposes—Held that it was a question of fact whether this was a pavement or paved footway within the "Turnpike Act, 1822," § 112, and it being left to the Court to decide the point, the Court decided that it was, and that therefore the Trustees were exempt from liability to repair under § 112. (2 L. T., 280.)

487. 1845. *Reg. v. Morios*. 4 & 5 Vict., c. 59, § 1—An Order under this Section must show that the road which is in question is within the Division of the County for which the Special Sessions is held—It need not show in what proportion of the Rate the sum to be paid stands—Nor out of which of the three Rates permitted by the "Highway Act, 1835," the sum

is to be taken—The 6 months within which a *Certiorari* can be had run from the date when the Quarter Sessions adjudicates on the Appeal, and not from the date of the original Order of the Special Sessions. (14 L. J., M. C., 75; 1 New Sess. Cas., 585; 2 Dowl. & L., 952.)

488. 1847. *Reg. v. Patty*. 4 & 5 Vict., c. 59—A Summons to a Surveyor that a contribution will be applied for need not be very precise, if it give a general but clear intimation of the matters which the parties are called upon to answer. (11 Jur., 288; 8 L. T., (O. S.), 370.)

489. 1838. *Reg. v. Preston Inhabitants*. If a Turnpike road be out of repair the Inhabitants are liable to be indicted, notwithstanding that the tolls are appropriated by Statute to the repairs—In such case the Inhabitants must seek relief from the Turnpike Trustees, under the provisions of "Turnpike Act, 1822," in that behalf. (2 Lewin, C. C., 193.)

490. 1848. *Reg. v. Preston*. 4 & 5 Vict., c. 59, § 1—The notice of an intended Information before a Special Sessions with the view of obtaining a contribution from the Highway Rate need not state what part of the Turnpike road is out of repair, or to what particular purpose the money is to be applied, or that the road is within the Petty Sessional Division in which the application will be made—The Order made will be sufficient if it shows that an Information has been exhibited, and acted upon by the Justices—The object of the Statute is to ascertain the amount requisite for the repair of so much of the road as is within the Parish. (18 L. J., M. C., 4; 12 Q. B., 816; 3 New Sess. Cas., 333.)

491. 1854. *Reg. v. South Shields Turnpike Trustees*. 4 & 5 Vict., c. 59—Local Turnpike Act providing that funds should be applied first to repair the road, and afterwards to pay interest on borrowed money—Trustees applied funds to pay arrears of interest, and the balance being insufficient for repairs, Justices made an Order for contribution—Order quashed at Quarter Sessions—Held that the order of appropriation in Local Act was not altered by 4 & 5 Vict., c. 59, and that the payment by the Trustees was improper—That nevertheless the Justices had power to make an Order, if expedient, although the deficiency was caused by misappropriation, but that the Quarter Sessions had exercised a sound discretion in reviewing their decision. (23 L. J., M. C., 134; 3 E. & B., 599; 2 C. L. R., 1506; 24 L. T., (O. S.), 143.)

492. 1853. *Reg. v. St. Alban's JJ.* If a Turnpike road be out of repair a single Justice has no power under the "Highway Act, 1835," § 94, to summon a Turnpike officer before him at Special Sessions—Order to be quashed as *ultra vires*—Justices are not justified in making any Order for payment of moneys necessary for repair without inquiring into the sufficiency of the funds—*George v. Chambers* followed. (23 L. J., M. C., 142; 17 Jur., 531.)

493. 1856. *Reg. v. Trafford*. "Highway Act, 1835," § 94—Summons against Surveyors for non-repair—Road ascertained to be Turnpike—Complainant offered to show that Trust had no funds, he appearing on behalf of the Trust—Complaint dismissed by Justices on the ground that proceedings under § 94 were improper—Held that the Justices were right; otherwise they would have convicted the wrong parties, the liability resting in the first instance on the Turnpike Officers. (5 E. & B., 967.)

494. 1843. *Reg. v. White*. 2 & 3 Vict., c. 81 [Repealed]. Turnpike Act directing Tolls to be devoted first to repairs and then to payment of interest—Income sufficient for repairs—But not for repairs and interest in addition—Held that the Justices had a discretion to make an Order for a contribution out of the Highway Rate, the Tolls being insufficient for both the purposes. (12 L. J., M. C., 31; 4 Q. B., 101.)

495. 1840. *Reg. v. Wilts JJ.* Highway out of repair—Appointment by Justices of a viewer—Justices are not bound by his report but may exercise their own discretion whether they will convict the Surveyor or not—*Mandamus* to Justices to convict and fine a Surveyor, refused—If certain Justices attending at Special Sessions do not take part in a decision of the Sessions they ought not to be brought before the Queen's Bench on an application for a *Mandamus* in respect of that decision—*Per Coleridge J.*:—"It is said that this penalty if inflicted would come out of the Highway Rate, but I do not think that § 96 bears out that construction." (8 Dowl., P. C., 717; [Reg. v. *Bouverie*] 4 Jur., 460.)

496. 1854. *Reg. v. Worthing Roads Trustees*. Local Acts—Turnpike Road—Part of a parish formed into a Local Government District—4 & 5 Vict., c. 59, held applicable, and contribution payable to the Turnpike out of the Highway Rate, but that the two parts of the Parish became distinct for the purpose of repairs both of highways and Turnpike roads and that only the Urban Highway Rate was to contribute to the Urban portion of the Turnpike and Rural to Rural. (23 L. J., M. C., 187; 3 E. & B., 989; 2 C. L. R., 1678; 23 L. T., (O. S.), 169.)

497. 1832. *Reg. v. Cumberworth Inhabitants* (1). Where Trustees are authorised by Statute to make a road the making of the whole of it is a condition precedent to any part becoming a public highway—Therefore, where 12 miles of road were to have been made, and 11½ miles (ending at a highway) only were made, no duty to repair was cast upon the Township. (1 L. J., M. C., 86; 3 B. & Ad., 108.) In 1836 there was a second case of *Reg. v. Cumberworth Inhabitants*. The trunk road mentioned above had been completed, but not a branch road, and the Court, adhering to its former view, held *Per Patteson, J.*, that "there is a bargain with the public, and . . . unless the Trustees make all the roads they do not complete their bargain"—Rule *absolute* for a Verdict of "Not Guilty." (6 L. J., M. C., 21; 4 A. & E., 731; 1 N. & P., 197.) [See *Roberts v. Roberts*.]

498. 1812. *Reg. v. St. George, Hanover Square, Inhabitants*. Where the duty to repair a highway is transferred by Statute from a Parish to other persons, if the Parish be indicted for non-repair a special plea stating who is bound to repair is not requisite, but the exemption may be taken advantage of under the general issue of "Not Guilty"—Although a Statute enacts that the paving of a particular street shall be done by certain Commissioners and provides the requisite funds, and another Act for paving the streets in the Parish contains a clause that it shall not extend to the particular street, the Inhabitants are not exempted from their Common Law liability to keep that street in repair. (3 Camp., 222.)

499. 1835. *Reg. v. Sivilor*. Charter granted by Elizabeth and confirmed by Charles I. exempting the tenants of certain ancient demesne lands from payment of Road Money (*Chimagium*) held not to exempt them from Statute Duty under the "Highway Acts"—These Statutes taken to repeal, *pro tanto*, the Charters. (4 L. J., M. C., 108; 5 N. & M., 125.)

500. 1862. *Roberts v. Roberts*. Act for construction of a Turnpike Road—Part only of the road made—Held that Justices could make an Order under 4 & 5 Vict., c. 59, for the repair of the part which had been completed and opened to the public. (3 B. & S., 183; 7 L. T., 320.)

501. 1861. *Sunk Island Turnpike Trustees v. Patrington Highway Surveyors*. 4 & 5 Vict., c. 59, § 1—This Statute applies to Turnpike Roads not in existence when it was passed—A Trust is none the less a Trust within the Act because its funds are derived from other sources than Tolls taken on the road. (31 L. J., M. C., 18; 1 B. & S., 747.)

502. 1866. *Weardale H. B. v. Alston Turnpike Trustees.* Local Act—Revenue more than sufficient to defray lawful expenditure and a small surplus available for paying off debts—Held that under these circumstances no contribution from the Highway Rates could be claimed, and that the Trustees were bound to apply their funds in the order and to the extent provided by their Act; and that 4 & 5 Vict., c. 59, could not override the subsequent Local Act—Justices' Order for a payment for this purpose held bad—*Reg. v. White* (4 Q. B., 101) distinguished. (35 L. J., M. C., 173; 14 L. T., 546; [W. v. Bainbridge] L. R., 1 Q. B., 396.)

503. 1797. *Wilkinson v. Bagshaw.* Local Turnpike Act—New road made under a Statute which likewise authorised the sale of the land which formed the old road unless it led to some place to which the new road did not lead—Held that the Trustees could not make a partial destruction of the road; but that if it led to any place, even a single house, not served by the new road the old road must remain open. (Peake, Add. Cas., 165.)

(iv.) *Arising out of Inclosures.*

504. 1877. *Bensfieldside L. B. v. Consett Iron Co.* Company lessees from Lord of Manor of lands inclosed under an Inclosure Act which provided for the setting out of roads as public highways, and reserved to the Lord all manorial rights and mines with power to do all acts for working the mines as freely as though the Act had not been passed, without paying any damages for so doing—Held that the Lord's assignees were not entitled so to work the mines as to damage the roads, and that the reservation to the Lord was subject to the public right created by the Act and did not protect the defendants from liability. (47 L. J., Ex., 491; L. R., 3 Ex. D., 54; 38 L. T., 530.)

505. 1635. *Duncomb's Case.* The owner of the land over which there is an open road may inclose the land, but he must leave a sufficient way, and repair it at his own charge. (Croke, Car. L., 366.)

506. 1632. *Henn's Case.* "In case where a man incloseth, and doth not make a good way, it is lawful for passengers to make gaps in his hedges, to avoid the ill way, so that they do not ride further into his inclosed grounds than is needful for avoiding the bad way." (Sir W. Jones, 296.)

507. 1843. *Manning v. Eastern Counties Railway Co.* An Inclosure Act authorised certain Commissioners to stop up any old road, subject to the concurrence and Order of 2 Justices—The Commissioners by their Award stopped up certain footpaths and the Award recited the concurrence, &c.—No Order of Justices could be found in the place of deposit mentioned in the Act for the Award and documents relating thereto—Held that the Award with the recital therein was *prima facie* evidence that the paths had been lawfully stopped up, the subsequent enjoyment not being shown to be inconsistent with the Award. (13 L. J., Ex., 265; 12 M. & W., 237.)

508. 1850. *Reg. v. Cricklade, St. Sampson Inhabitants.* Public bridleway across a Common but with no definite track—Common inclosed by Commissioners who set out a road 30 feet wide with the same termini and line of direction as the old bridleway—Award that this way should be both a public bridleway and a private carriage road for certain persons who were to repair—Indictment against Parish for non-repair—No Order or Certificate of Justices proved—Held that the old bridleway was never effectually stopped; that the road set out was in effect the same way; and that the Parish was still liable to repair it as a bridle-road, although it had also been set out as a private carriage road. (19 L. J., M. C., 169; 14 Q. B., 735; 15 L. T., (O. S.), 296.)

509. 1859. *Reg. v. East Hagbourne Inhabitants.* Ancient highway altered by Award of Inclosure Commissioners under 6 & 7 Will. IV., c. 115—Original road entirely comprehended within the new road—Road repaired by Parish both before and since the Award—No declaration by Justices that the road had been fully completed and repaired, or proceedings under the "Highway Act, 1835," § 23—Held that the Parish was not liable to repair. (28 L. J., M. C., 71; Bell, C. C. R., 135; 32 L. T., (O. S.), 339.)

510. 1856. *Reg. v. Gate Fulford Inhabitants.* Parish comprising two Townships, G. Fulford and W. Fulford—Inclosure Act directing that roads should be set out and should be repaired by G. Fulford—Roads all in that Township at the time of making the Award—Award directing that the roads should be repaired by "Fulford"—Held that G. Fulford was liable to repair, though the road ran through what at time of the trial was understood to be part of W. Fulford. (Dears. & B., C. C., 74.)

511. 1854. *Reg. v. Nether Hallam Inhabitants.* Commissioners under an Inclosure Act for Township A. set out an old road belonging to Township B. of an increased width, and directed it to be repaired in future by A., though there was no dispute as to boundary so as to give them jurisdiction to alter or settle it—Held that the Award was of no avail to shift the liability from B. to A. (3 C. L. R., 94; 6 Cox, C. C., 435.)

512. 1758. *Rea v. Flecknow Inhabitants.* An owner of land over which there is a highway may exercise his rights to inclose the land under an Inclosure Act without taking upon himself any obligation to repair the road the duty as to which continues with the Parish. (2 Ld. Keny., 261; 1 Burr., 461.) [As to the value of this decision see the foot-note on p. 465 of Burrows's Report.]

513. 1835. *Rea v. Hatfield Inhabitants.* "Inclosure Act, 1801," § 9—A road continued, as well as a road newly made, under the Award of Commissioners of Inclosure, must be declared by Justices in Special Sessions to be fully completed and repaired before the Inhabitants can be indicted for neglect to repair—Where the herbage of a road becomes vested by § 11 in the owners of allotments on each side, no presumption arises that the soil itself belongs to such owners. (4 A. & E., 156.)

514. 1800. *Rea v. Richards.* An Award under an Inclosure Act set out a road for the use of the Inhabitants of 9 Parishes directing 6 of those Parishes to repair it—Held that no Indictment could be supported against the latter for non-repair, the road being in effect only a private road. (8 T. R., 634.)

515. 1832. *Rea v. Wright.* Where Commissioners, empowered under an Inclosure Act to set out public and private roads, the former to be repaired by the Township and the latter by such persons as they should direct, exceeded their authority in awarding that private roads should be repaired by the Township, it was held, upon the whole evidence, to be a proper question for a Jury whether or not one of such private roads which had been repaired by the Township, though originally intended to be private had not been dedicated to, and adopted by the public—*Per* Lord Tenterden, C. J.:—"I am strongly of opinion when I see a space of 50 or 60 ft. through which a road passes, between enclosures set out under Act of Parliament, that, unless the contrary be shown, the Public are entitled to the whole of that space, although perhaps from economy the whole may not have been kept in repair. If it were once held that only the middle part, which carriages ordinarily run upon, was the road, you might by degrees inclose up to it so that there would not be room left for 2 carriages to pass. The space at the sides is also necessary to afford the benefit of air and sun. If trees and hedges might be

brought up close to the part actually used as the road, it could not be kept sound." (1 L. J., M. C., 74; 3 B. & Ad., 681.)

516. 1832. *Thackrah v. Seymour*. "Inclosure Act, 1801," §§ 8 and 11—Award under a Local Act, omitting mention of an ancient footway, and setting out no new footway—Held that the allotment did not operate to extinguish the old way. (2 L. J., Ex., 10; 1 Cr. & Mee., 18; 3 Tyr., 87.)

(2.) HIGHWAYS IN DIFFERENT PARISHES.

517. 1856. *Gwyn v. Hardwiche*. Footway in 2 Parishes—Power under an Inclosure Act to stop up (subject to appeal to Sessions) so much of it as lay in one Parish duly exercised, whereby the residue of the way became a *cul-de-sac*—Held that there having been no appeal the way was duly stopped in one Parish notwithstanding that the unstopped residue in the other Parish became useless as a thoroughfare—*Semble*, the latter part remained a public way. (25 L. J., M. C., 97; 1 H. & N., 49; 27 L. T., (O. S.), 72.)

518. 1805. *Nicholls v. Parker*. Traditionary reputation is evidence of boundary between 2 Parishes and manors—Evidence was admitted of what old persons, dead before the trial, had said concerning the boundaries, although they claimed rights of Common on the respective Wastes, which might be enlarged by such evidence; their evidence was admissible because there was no litigation pending, or in contemplation, at the time to give a reason for suspecting the motives of their testimony. (14 East, 331, n.)

519. 1845. *Reg. v. Hickling Inhabitants*. 34 Geo. III., c. 64, § 2 [Repealed]: "Highway Act, 1835," §§ 58-9—An Order of Justices dividing for purposes of repair a road lying in 2 Parishes and following the form prescribed by the Statute is conclusive as to the liability of each Parish—It is not open to either Parish on an Indictment for non-repair of the portion so allotted to impeach the jurisdiction of the Justices by producing evidence to prove that no part of the road ever was within such Parish—The Order of the Justices must show on its face that it was made at a Special Sessions for highways. (14 L. J., M. C., 177; 7 Q. B., 880; 2 New Sess. Cas., 117.)

520. 1864. *Reg. v. Strand B. W.* Where a highway is employed to define the boundary of a district the *medium flum viæ* must (in the absence of contrary evidence) be deemed the actual boundary. (Metropolis.) (33 L. J., Q. B., 299; 4 B. & S., 551; 11 L. T., 183.)

521. 1780. *Rea v. Turnshend*. "Highway Act, 1773," § 47 [Repealed]—If a Parish consisting of 2 districts, each bound to repair separately, be convicted and fined for the non-repair of a road in one district, the other having no notice of the Indictment, the Court will consider it as being substantially the conviction of the one district, and if the fine be levied on an inhabitant of the other, will grant a special *Mandamus* for a Rate to be levied on the district bound to repair the indicted part of the Road. (2 Doug., 420.)

(3.) OBTAINING MATERIALS FOR.

522. 1851. *Clowes v. Beck*. Injunction granted against Surveyors of Highways to restrain them from removing beach and sand from a sea-shore for road repairs notwithstanding that plaintiff's title was doubtful and that he ought to proceed at Law to establish it—The Court so decided on the ground that the balance of probable injury was with the plaintiff rather than with the Surveyors, it appearing that the continued removal of the beach was doing irreparable injury by causing the sea steadily to encroach on the land of the plaintiff. (20 L. J., Ch., 505; 13 Bea., 347; S. C. on appeal, 2 De G. M. & G., 731.)

523. 1863. *Constable v. Nicholson*. The alleged right for the inhabitants of a Township to take stones from the land of another person for the purpose of repairing highways is a claim to a profit *à prendre*, and cannot therefore be claimed by custom—Neither can it be claimed by prescription or grant, as inhabitants are incapable by that description of taking such an easement, unless they can prove incorporation. (32 L. J., C. P., 240; 14 C. B., (N. S.), 230.)

524. 1876. *Ellis v. Bromley L. B.* A right given by Statute to Highway Surveyors to dig gravel from an existing pit held to authorise a lateral as well as a vertical extension of a pit. (45 L. J., Ch., 763; 35 L. T., 182.)

525. 1849. *Huntley v. Russell*. Gravel-pit on the soil of a Rectory opened and kept open by orders of Justices under the "Highway Act, 1773," § 29 [repealed], and the "Highway Act, 1835," § 54—Soil not sloped down or filled up according to § 31 of former Act or § 55 of latter Act—No step taken during the Incumbency to enforce this duty on Surveyors—While pit was open some gravel was sold by Rector's lessee to private purchasers without sloping, &c.—Action against Rector's Executors for dilapidations—Held that the excavations for the highways were not chargeable as acts of Waste on the part of the Rector, being done under the Statute, but that the digging and sale of gravel to private purchasers was Waste for which the Executors were liable—*Quere*, whether the Executors could be charged in any form for the Rector's omission to slope or fill up the excavations or oblige the Surveyors to do so? (18 L. J., Q. B., 239; 13 Q. B., 572; 13 L. T., (O. S.), 526.)

526. 1852. *Padwick v. Knight*. A Highway Surveyor cannot justify a trespass under a prescriptive right, or a custom, to take stones from the Waste, whether adjoining the sea-shore between high- and low-water-mark, or otherwise, for the purpose of repairing the highways of a Parish—*Semble*, that it would be a good justification to plead a prescriptive right of the inhabitants alleging the Surveyor to be an inhabitant. (22 L. J., Ex., 198; 7 Ex., 854; 19 L. T., (O. S.), 206.)

527. 1871. *Pitts v. Kingsbridge H. B.* "Highway Act, 1835," §§ 51-2—A Highway Board must not take shingle from a beach below high-water-mark so as to cause an increased risk of encroachment by the sea—A special custom to take shingle from a beach above high-water-mark for repair of highways is bad as to such part of the beach as is private property—A contractor's employers are liable for injurious acts properly arising out of the contract, but the contractor is personally liable for such acts if foreign to the contract. (25 L. T., 195; 19 W. R., 884.)

528. 1757. *Rea v. Manning*. Local Turnpike Act—An Order of Sessions for entering land to obtain materials should show notice to the occupier, the necessity for the Order, the kind of provision wanted, and the fields which it was intended to search; and should award satisfaction to the owner and occupier—Order defective on these points, quashed—"All special authorities must be strictly pursued." (1 Burr., 377; 2 Keny., 561.)

529. 1845. *Rylatt v. Marsfleet*. Inclosure Act, allotting land to be reserved for supplying stones, &c., to repair roads—Held that the parishioners were not entitled to get stones for any other purposes. (14 L. J., Ex., 305; 14 M. & W., 233.)

530. 1869. *Smith v. Stocks*. Gravel-pit allotted by Inclosure Commissioners to Surveyors of Highways for getting road materials—Rights not claimed for 26 years—Pit and road thereto ploughed up and cultivated—Held that the rights of the Surveyors were extinguished by the Statute of Limitations—Nor did the fact that the tenant of the land had, after possession taken, been himself a Surveyor of Highways make

any difference. (38 L. J., Q. B., 306; 10 B. & S., 701; 20 L. T., 740.)

531. 1841. *Tapsell v. Crosskey*. "Turnpike Act, 1822," §§ 97-8—The words "inclosed lands" are used in their popular sense as denoting lands actually inclosed within fences—A Surveyor may take materials from private lands ("Downs") not inclosed or fenced off without any Order of Justices under § 98—Land surrounded by a fence out of repair and therefore in one sense "open" is to be deemed "inclosed" and protected by § 98. (10 L. J., Ex., 188; 7 M. & W., 441.) [Effect of decision modified by 4 & 5 Vict., c. 51, § 1.]

532. 1862. *Thorn v. Wingate*. Adverse possession for 20 years against Highway Surveyors bars their claims in respect of land allotted to them by the Inclosure Commissioners for the purpose of providing road materials. (10 B. & S., 714, n.)

(4.) INDICTMENT FOR NON-REPAIR.

533. 1587. *Madox's Case*. Indictment for a nuisance to a "horseway," quashed—It should have been to the "Queen's Highway," or "the Highway." (Croke, Eliz., 63.)

534. 1841. *Reg. v. Barnard Castle Inhabitants*. Indictment for non-repair—The fine impossible under § 96 can only be applied towards the repair of the highway indicted—If therefore after conviction and Order and before payment of the fine the defendants effectually repair the way they are entitled to have the proceedings stayed—And the prosecutors cannot claim the fine on behalf of third parties for repairs done previously to the conviction—Where defendants remove an Indictment by *Certiorari*, a merely nominal prosecutor is not entitled to costs under 5 W. & M. c. 11, § 3 as being a party "grieved or injured." (10 L. J., M. C., 53; 5 Jur., 799.)

535. 1841. *Reg. v. Botfield*. Per Coleridge J.:—"In an Indictment for a nuisance by not repairing a road, the words 'from' and 'to' exclude the *termini*."—So in an Indictment for obstructing a highway leading from A. to B. by placing a gate across it, A. and B. are excluded, and therefore if the gate is put up in one of the terminal Townships the defendant must be acquitted. (Carr. & M., 151.)

536. 1849. *Reg. v. Brightside Biorlon Inhabitants*. Navigation Act requiring the proprietors to keep in repair an ancient highway subject to liability to Indictment for default—Proviso in Act that the inhabitants of the Townships through which the highway ran were not to be excused from contributing to the repairs—Held that the Township was not exempt from its Common Law liability to repair—In an Indictment for non-repair it is admissible evidence, in order to prove a highway, to prove that an Indictment against an adjoining Parish in respect of a highway which is a continuation of the one in dispute was either submitted to, or prosecuted to a conviction. (19 L. J., M. C., 50; 13 Q. B., 933; 4 New Sess. Cas., 47.)

537. 1865. *Reg. v. Buckland Inhabitants*. "Highway Act, 1862," § 19—Indictment for non-repair—"Not Guilty" on the ground that the road was a private road and not a highway—In such a case the Court has no jurisdiction to award Costs: under the Act of 1862 the law is the same as it was under the Act of 1835 (§ 95). (34 L. J., M. C., 178; 6 B. & S., 397; 12 L. T., 380.)

538. 1841. *Reg. v. Chalkcombe Inhabitants*. Indictment for non-repair—Verdict for defendants—In such a case the Court will not grant a New Trial on the ground of misdirection, but will in its discretion suspend the Judgment in order that a new Indictment may be preferred. (6 Jur., 481; 2 Mood. & R., 311.)

539. 1844. *Reg. v. Clark*. Where Justices have directed an Indictment for non-repair and the Judge

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of Assize orders payment of the Costs out of the Highway Rate, he must ascertain the amount and order payment of the sum so ascertained—A Judge's Order to pay Costs generally, cannot be enforced by *Mandamus*—*Quere*, whether the amount can be ascertained after the commission of the Judge of Assize has expired? (13 L. J., M. C., 91; 5 Q. B., 887; 1 New Sess. Cas., 143; Dav. & Mer., 687.)

540. 1855. *Reg. v. Claxby Inhabitants*. Indictment for non-repair—Verdict "Guilty"—A Parish is not to be excused from putting a road into good repair by the fact that the road is little used, has never been repaired with hard materials, is formed of various tracks and passes over ascents and descents, and terminates in another Parish which denies it to be a highway, and even if repaired would be useless unless the portion in the adjoining Parish were also repaired—The Court will not prescribe the particular mode of repair, but when it appears that a certain amount is necessary to put the highway into substantial repair a fine to the requisite amount will be imposed. (24 L. J., Q. B., 223; 3 C. L. R., 986.)

541. 1864. *Reg. v. Cleckheaton Inhabitants*. "Highway Act, 1835," §§ 94-5—Indictment for non-repair of a Highway—Counts for a cart and carriage-way and also for a pack and prime-way—Verdict of the Jury that the way was not a cart, &c., way, and that as a pack, &c., way it was not out of repair—Verdict entered for defendants, and prosecutor held not entitled to Costs. (11 L. T., 305.)

542. 1847. *Reg. v. Colling*. An Indictment against a Township for the non-repair of a highway must aver that the road in question was a road which, but for the custom, would have been repairable by the Parish. (2 Cox, C. C., 184.)

543. 1852. *Reg. v. Denton Inhabitants*. Where between the finding of an Indictment for non-repair of a road and plea pleaded the Statute on which alone the Indictment could be supported was repealed without any reference to pending prosecutions, and afterwards a conviction was obtained nevertheless, the Court arrested the Judgment—*Quere*, is it necessary, in Indictment against inhabitants of district charging liability to repair highway, to prove consideration for such liability, or is it to be inferred from the fact of repair? (21 L. J., M. C., 207; 18 Q. B., 761; 1 Dears. & P., C. C., 3.)

544. 1864. *Reg. v. Denton Inhabitants*. "Highway Act, 1835," § 98—Indictment for non-repair—A mere plea of "Guilty" is not a frivolous or vexatious "defence:" in point of fact it is no defence at all and therefore Costs cannot be awarded. (34 L. J., M. C., 13; 5 B. & S., 821; 11 L. T., 371.)

545. 1845. *Reg. v. Down Holland Township*. "Highway Act, 1835," § 95—A Certificate for Costs can only be granted when the road indicted is proved affirmatively to be a highway—The Court will not go into the question on affidavits. (15 L. J., M. C., 25; 2 New Sess. Cas., 177.)

546. 1865. *Reg. v. East Stoke Inhabitants*. A prosecutor removing by *Certiorari* an Indictment for non-repair is only liable for Costs by virtue of the recognizance required by 16 & 17 Vict., c. 30, § 5, and if he has not entered into such a recognizance Costs cannot be recovered against him—The proper remedy for such a default is given by § 7 which provides that in that case the *Certiorari* may be disregarded. (6 B. & S., 536; 13 W. R., 737.)

547. 1848. *Reg. v. Fyfehead Inhabitants*. If at the trial of an Indictment for non-repair it appears that the road actually indicted is not the road set out in the Order of Justices under the "Highway Act, 1835," § 94, and the prosecution fails in consequence the Judge cannot certify for Costs under § 95. (3 Cox C. C., 59.)

548. 1843. *Reg. v. Great Broughton Inhabitants*.

"Highway Act, 1835," § 95—A Judge at *Nisi Prius* may order payment of prosecutor's Costs though the Indictment had been removed from Sessions by *Certiorari*. (2 Mood. & R., 444.)

549. 1862. *Reg. v. Haslemere Inhabitants*. "Highway Act, 1835," § 95—Indictment for non-repair of highway—Plea of "Guilty" and no actual trial, notice having been given of intention so to plead—Held nevertheless that a Judge of Assize has power to award Costs against the Parish. (32 L. J., M. C., 30; 3 B. & S., 313; 7 L. T., 382.)

550. 1853. *Reg. v. Haughton Inhabitants*. Upon the trial of an Indictment against the inhabitants of Township H. for non-repair of a highway a prior Judgment of Quarter Sessions upon a presentment by a Justice under the "Highway Act, 1773," for non-repair by H. of the same highway was put in—The presentment alleged that the highway was in H., and that H. was liable for its repair—It also appeared by the Judgment that 2 inhabitants of H. had appeared and pleaded "Guilty," and that a fine was imposed—Held that this was conclusive evidence that the highway was in H. and that H. was liable—The presentment did not state how the Township was liable: Held, that having submitted to it the defendants were bound by it—The absence of proof of payment of the fine imposed did not prevent the Judgment from acting as an estoppel, no fraud being imputed—A recital in a repealed Local Act that the road in question was in D. held, not conclusive. (22 L. J., M. C., 89; 1 E. & B., 501; 6 Cox, C. C., 101.)

551. 1862. *Reg. v. Hawkhurst Parish* (2). Indictment for non-repair—Removal thereof by *Certiorari*—Held that an Indictment not being a Civil proceeding there cannot be an appeal to a Court of Error. (11 W. R., 116.)

552. 1845. *Reg. v. Heanor Inhabitants*. "Highway Act, 1835," § 95—The power of a Judge to certify for Costs only extends to cases where there is a highway and the liability to repair the same is disputed—And therefore when on an Indictment for non-repair of a carriage-way the defendants were acquitted on the sole ground that the way was not a highway and the Judge certified for Costs under this Section the Court set aside the Certificate. (14 L. J., M. C., 38; 6 Q. B., 745; 1 New Sess. Cas., 460.)

553. 1863. *Reg. v. Heytesbury Inhabitants*. "Highway Act, 1835," § 95—Indictment for non-repair—Jury discharged because unable to agree on a verdict—Held that on this account the Judge had no power to award Costs against the Parish—Order of Justices held bad for not showing on its face that it was made at a Special Sessions for Highways held within the Division in which the highway complained of was situate. (8 L. T., 315.)

554. 1845. *Reg. v. Hickling Inhabitants* (2). "Highway Act, 1835," § 94—An Order directing an Indictment for non-repair must show on the face of it that it was made at a Special Sessions within the Division in which the road is situated—If it do not, it is void; and an Order for Costs made under § 95 by the Judge who tried the cause will be set aside on the ground of the defect in the Order of the Justices. (15 L. J., M. C., 23; 7 Q. R., 880 at p. 890; 2 New Sess. Cas., 117.)

555. 1868. *Reg. v. Ipstones Inhabitants*. "Highway Act, 1835," § 95—An Indictment for non-repair when removed by *Certiorari* is no longer within § 95, so that if it is sent down for trial at *Nisi Prius* a Judge of Assize has no power to make an Order for payment of the Costs of the Prosecution—Costs in such a case are governed by 5 Will. & M., c. 11.—*Reg. v. Eardisland*, (23 L. J., M. C., 145), over-ruled. (37 L. J., M. C., 37; L. E., 3 Q. B., 216; 9 B. & S., 106; 17 L. T., 497.)

556. 1863. *Reg. v. James*. The "South Wales

Highway Act, 1860," and "Highway Act, 1835," are to be construed together as one Act—Therefore, notwithstanding some alterations in the working of the earlier Act prescribed by the later Act, § 95 of the earlier Act remains in force in South Wales. (32 L. J., M. C., 211; 3 B. & S., 901.)

557. 1865. *Reg. v. Johnson*. "Highway Act, 1835," § 95—Before directing an Indictment against a Parish for non-repair, where the liability is denied, the Justices must have some evidence that the *locus in quo* is a highway—If the existence of the highway is denied, *quære* whether the Justices have any jurisdiction. (34 L. J., M. C., 85; [Reg. v. Asherton] 13 W. R., 339; 11 L. T., 706.)

558. 1854. *Reg. v. Lambeth Surveyors*. An Order of Sessions for the payment of the Costs of a prosecution for non-repair is bad unless the amount of the Costs is ascertained and ordered by the same Sessions—The Sessions cannot refer the Costs to be taxed by their officer after the Sessions. (3 C. L. R., 35.)

559. 1860. *Reg. v. Langley Inhabitants*. "Highway Act, 1835," § 95—When a Parish is indicted for non-repair and by two Surveyors pleads "Not Guilty," it is not competent to one only of such Surveyors to appear in person and retract such plea, the other Surveyor merely pleading by the Clerk of his Solicitor. (8 Cox, C. C., 366; 2 F. & T., 170.)

560. 1876. *Reg. v. Leo*. "Highway Act, 1835," § 95—Summons for non-repair of a highway—Indictment ordered by Justices—Found at the trial that the way was only a foot-path and bridle-way, and Indictment amended accordingly, so as to be restricted to the limited obligation, which was not disputed—Held that the Judge's Order for Costs to be paid out of the Rates must be quashed, for the prosecution after such amendment was no longer "such prosecution" within § 95. (45 L. J., M. C., 54; L. R., 1 Q. B. D., 198; 34 L. T., 445.)

561. 1857. *Reg. v. Manchester, Mayor*. 16 & 17 Vict., c. 30, § 5—The prosecutor of an Indictment against a Corporation for non-repair of a highway, which is removed by *Certiorari* at his instance, is not required to enter into recognizances to pay the defendant's Costs in case of acquittal, Indictments against Corporations being excepted from this Act. (26 L. J., M. C., 65; 7 E. & B., 453; 28 L. T., (O. S.), 369.)

562. 1843. *Reg. v. Martin*. "Highway Act, 1835," § 94—In an Order by Justices at Special Sessions for the Indictment of a highway it should be distinctly stated that such highway is within the Division for which such Sessions are held: if this is not stated an Order for payment of Costs made at Quarter Sessions is void, notwithstanding that it may appear, on the face of the proceedings at Quarter Sessions that the highway was within the jurisdiction of the Special Sessions. (13 L. J., M. C., 45; 2 Q. B., 1037; D. & M., 386.)

563. 1843. *Reg. v. Milton Inhabitants*. Indictment for non-repair—Evidence of Boundaries—A Parish map produced from the Parish Chest, made under a private Inclosure Act (not printed) is not evidence of boundaries without proof of the Act—But it being proved by the Surveyor who made the map 34 years previously that he laid down the boundaries from the information of an old man of 60 who went round with him; held, that this would have been evidence of reputation, on proof, further, that the old man was not alive at the trial; but that without proof of his death it was not evidence. (1 C. & K., 58.)

564. 1869. *Reg. v. Nembold Inhabitants*. It is not necessary, in order to support a Conviction for the non-repair of an ancient common highway, to prove that the parish has ever actually repaired it. (19 L. T., 656; 17 W. R., 295.)

565. 1840. *Reg. v. Paul*. "Highway Act, 1835,"

§ 95—On an Indictment in the ordinary form for the non-repair of a highway a Parish cannot be convicted for not rebuilding a sea-wall washed away, along the top of which the alleged highway used to run—On a Parish being acquitted on such an Indictment on the ground (if no highway the Court is not bound to award Costs—A Judge who tries at *Nisi prius* an Indictment for non-repair removed by *Certiorari* has no power to award Costs under the above Section. (2 Mood. & R., 307.)

566. 1843. *Reg. v. Pembroke Inhabitants*. "Highway Act, 1835," § 98—Where a Certificate has been granted that the defence to an Indictment removed by *Certiorari* into the Queen's Bench is frivolous and Costs have been awarded against the defendants the payment thereof may be enforced by attachment for contempt—6 Geo. IV., c. 50, § 34, authorising the Judge before whom the "Cause" is tried to certify for the Costs of a Special Jury, applies to criminal cases. (12 L. J., Q. B., 47; 3 G. & D., 5 and 503; 3 Q. B., 901.)

567. 1839. *Reg. v. Preston Inhabitants*. "Highway Act, 1835," § 98—Indictment preferred at Quarter Sessions but removed by *Certiorari*—The Queen's Bench has power to award to the prosecutor Costs incurred previously to the removal of the Indictment if the defence has been in the opinion of the Judge frivolous or vexatious. (7 Dowl., P. C., 593.) [An application for Costs had been refused by the Judge who tried the case at Assizes, on the ground of want of authority to grant them.—See S. C. at *Nisi Prius*, 2 Mood. & R., 137.]

568. 1854. *Reg. v. Sandon Inhabitants*. "Highway Act, 1835," § 95—An Indictment for non-repair preferred at the Assizes by an Order of Justices, whereon a true Bill has been found, may be removed by *Certiorari*. (23 L. J., M. C., 129; 3 E. & B., 547; 2 C. L. R., 1699; 23 L. T., (O. S.), 64.)

569. 1854. *Reg. v. St. Mary, Lambeth, Highway Surveyor*. "Highway Act, 1835," § 95—Indictment for non-repair tried at Michaelmas Sessions and Costs of the prosecution allowed—No amount specified and nothing done on the Order till March following when the Costs were taxed—Held that the Order could not be enforced as the Sessions which tried the case alone had power to award Costs, and that Sessions had been superseded by the intervening Epiphany Sessions before the taxation. (24 L. T., (O. S.), 145.)

570. 1858. *Reg. v. Stainhall Inhabitants*. "Highway Act, 1835," § 95—Indictment for non-repair—Plea, "Guilty"—Practice as to pleading by inhabitants—On the suggestion of Pollock, C.B., two of the inhabitants present pleaded to the Indictment, and 3 gentlemen entered into a bond to see the road repaired. No Costs were ordered. (1 F. & F., 363.) [See Judgment in *Reg. v. Haslemore*.]

571. 1843. *Reg. v. Stevenston Inhabitants*. An Indictment stated a highway for carriages "leading from the town of A. in the county of B. towards and unto the village of E. in the same county" a part of which was out of repair—The part charged to be out of repair was a part of F. lane—It was proved that to go from A. to E. in a carriage a person must first go 4 miles along the C. Turnpike road, then all along F. lane, and then cross the W. Turnpike road and for a short distance go along a road running from the W. Turnpike road to E.—Held that the road was not misdescribed—A road is not the less a highway because part of it is Turnpike. (1 C. & K., 55.)

572. 1852. *Reg. v. Surrey JJ.* "Highway Act, 1835," § 95—Highway out of repair—Surveyor summoned before Justices—Liability denied—Order by Justices that Parish should be indicted—Indictment preferred but trial adjourned—Plea, that a private person was liable *Ratione tenura*—Verdict for the Parish—The lands were owned by one of the Justices

who had signed the Order to indict: there was no evidence of collusion between him and the prosecutor—The Quarter Sessions having refused to allow the Costs out of the Highway Rate on the ground that the Order was void, because one of the Justices making it was interested, *Mandamus* granted to compel the allowance of Costs—The Order to indict was valid: The Quarter Sessions had jurisdiction to order Costs though the trial had been adjourned: and had no discretion to refuse Costs. (21 L. J., M. C., 195; 1 B. C. C., 70; 19 L. T., (O. S.), 171.)

573. 1850. *Reg. v. Turmeston Inhabitants*. Indictment for non-repair alleging an immemorial highway, and that it was out of repair—The first allegation not proved as regards immemoriality—Held that the averment might be neglected as surplusage, and that proof having been given that the road was a highway and out of repair the verdict of "Guilty" should be allowed to stand—It is not material to the liability of a Parish to show how a road became a highway provided that it is such—The way from T. to E. referred to in the Indictment led from T. into a Turnpike road; then lay for a short distance along that road; then branched off to E.—This was the direct way from T. to E.—Held that the way was properly described as from T. to E. (20 L. J., M. C., 46; 16 Q. B., 109; 4 Cox, C. C., 349.)

574. 1847. *Reg. v. Upton St. Leonard's Inhabitants*. Indictment for non-repair of a highway preferred at the Assizes—Bill thrown out by Grand Jury—Two Jurymen landowners in the parish and taking part in showing that the road ought not to be repaired—On proof of these facts the Court granted a criminal Information against the Parish for the alleged non-repair. (16 L. J., M. C., 84; 10 Q. B., 827; 2 New Sess. Cas., 582.)

575. 1846. *Reg. v. Vowchurch Inhabitants*. "Highway Act, 1835," § 95—Indictment for non-repair—Plea, "Guilty." (2 C. & K., 393.) [See Judgment in *Reg. v. Haslemore*.]

576. 1840. *Reg. v. Walton Inhabitants*. Indictment for non-repair—Verdict "Guilty"—Affidavit that little progress had been made with the repairs—The Court refused a Rule *absolute* for a fine but enlarged the Rule *nisi* on the ground that it was not reasonable to expect repairs to be executed with speed in the winter. (4 Jur., 195.)

577. 1847. *Reg. v. Watford Inhabitants*. "Highway Act, 1835," § 95—Indictment for non-repair—A Judge's Certificate for payment of Costs should state on the face of it out of what funds the Costs are to be paid; where a Certificate did not do so the Court set it aside—*Semble*, that the Certificate was bad for not specifying the amount—The Certificate was made to pay the Costs to G. H. A. [the prosecutor] or his attorney—*Semble*, that it was not bad because G. H. A. was dead when it was made—*Semble*, that it suffices if it may be gathered by reasonable implication that the road is within the Division for which the Justices were sitting. (4 D. & L., 593; 1 Saund. & C., 336; 9 L. T., (O. S.), 59.)

578. 1851. *Reg. v. Waverton Inhabitants*. Indictment for non-repair stated that a part of the highway from W. to M. at a place called A. and extending thence to L. highway was out of repair—Evidence that the place mentioned as A. was in fact a place called B.—Held, no material variance, the erroneous description relating to the *terminus* not of the road but of the dilapidated portion thereof—Consideration of the circumstances under which the allegations of one count will be deemed sufficiently averred by reference in other counts. (21 L. J., M. C., 7; 17 Q. B., 562; 2 Den., C. C., 340; 18 L. T., (O. S.), 136.)

579. 1839. *Reg. v. Yarkhill Inhabitants*. "Highway Act, 1835," § 95—Indictment for non-repair preferred by Order of Justices—Verdict "Guilty"—

Prosecutor held entitled to his Costs out of the Highway Rate—The words of the Act are imperative and leave no discretion to the Judge. (9 C. & P. 218.)

580. 1834. *Rex v. Bishop Auckland Inhabitants.* An Indictment charged that the Inhabitants of Bondgate in A., Newgate in A., and the Borough of A., in the Parish of St. Andrew A., were immemorially liable to repair a highway in the town of Bishop A., in the Parish of St. Andrew A., and no consideration was laid—Indictment held bad, in arrest of Judgment, as not showing that the highway was within the District of defendants—Held to be no objection that the inhabitants of the 3 Townships were charged conjointly. (1 A. & E., 744.)

581. 1809. *Rex v. Bridekirk Inhabitants.* Indictment for non-repair—Plea that the Parish had immemorially been divided into 7 Townships each liable for the highways within it, and that part of the highway indicted was within A. Township and part within B. and that the respective parts ought to be repaired accordingly—Plea held bad because it did not specify which parts of the highway in question lay within the two Townships respectively. (11 East, 304.)

582. 1793. *Rex v. Chadderton Inhabitants.* "Highway Act, 1773," § 65 [Repealed]—Any application for Costs under this section on the trial of an Indictment for non-repair must be made to the Judge who tries the case, as the Statute only gives power to the Court "before whom the Indictment is tried." (5 T. R., 272.)

583. 1794. *Rex v. Clifton Inhabitants.* If part of a Parish be in one County and part in another and a highway in one part be out of repair an Indictment against the inhabitants of that part only is bad—The Indictment must be against the whole Parish. (5 T. R., 498.)

584. 1698. *Rex v. Dixon.* An Indictment for non-repair must always be against the Parish generally—An Indictment against Overseers, quashed. (12 Mod., 198.)

585. 1835. *Rex v. Downshire (Marchioness of).* Where in an Indictment for non-repair, the part out of repair was described as running from a certain Turnpike road "towards and unto the Parish Church" and the way proved was from the road to a Churchyard gate from which there was a public way inside the yard into a new way running at an acute angle to the Church, it was held that the way was well described. (5 L. J., K. B., 50; 4 A. & E., 232; 5 N. & M., 662.)

586. 1810. *Rex v. Eardisland.* Indictment for non-repair against a Parish comprising 3 Townships, A., B., & C.—Plea on the part of C. that each Township has immemorially repaired its own highways separately

The Records of Indictment against the Parish generally for neglect to repair highways in A. and B. with general pleas of "Not Guilty," and convictions thereupon, are *prima facie* evidence to disprove the custom for each Township to repair separately; but evidence will be admitted that these pleas were pleaded by inhabitants of A. and B. without the privity of the inhabitants of C. (2 Camp., 494.)

587. 1836. *Rex v. Eastington Inhabitants.* Indictment for non-repair—A Parish which pleads that it is not liable must by its plea also show who is liable—Plea that there was a township in a Parish liable by immemorial custom to repair the roads which, but for that custom would be repairable by Parish—No averment that the road in question was one which but for the custom, the Parish would be liable to repair—Jury found Custom—Verdict for defendants—But plea held bad in arrest of Judgment. (6 L. J., M. C., 17; 1 N. & P., 193; 5 A. & E., 565; 2 H. & W., 373.)

588. 1818. *Rex v. Ecclesfield Inhabitants.* Indictment for non-repair—Plea that a particular District within the parish had immemorially repaired all highways within that district, of which the highway named

in the Indictment was one—Plea held good notwithstanding that it did not state any consideration for the liability of the inhabitants of the district—*Rex v. St. Giles, Cambridge*, distinguished; "There cannot be a custom in one place to do something in another." (1 B. & Ald., 348.)

589. 1790. *Rex v. Gamlingay Inhabitants.* An Indictment against Parish B. for non-repair of a road from A. to B. is exclusive of B., and therefore bad—It is not aided by a subsequent allegation that a certain part of the same highway situated in B. is in decay. (3 T. R., 513; 1 Leach, C. C., 528.)

590. 1810. *Rex v. Great Canfield.* An Indictment for non-repair must distinctly state the precise termini of the road—The road must be direct. (6 Esp., 136.)

591. 1779. *Rex v. Hartford Inhabitants.* In an Indictment for non-repair it must be alleged that the highway out of repair lies within the Parish indicted. (2 Cowp., 111.)

592. 1696. *Rex v. Ireton Inhabitants.* Upon an Indictment against a Parish for not repairing a highway the defendants can give nothing in evidence upon a plea of "Not Guilty," but that the way is in repair; but if the Indictment be against a particular person he may give evidence that others ought to repair it. (Comberbach, 396.)

593. 1792. *Rex v. Kettleworth.* 5 & 6 Will. & M., c. 11, § 3—A Justice who indicts a road for being out of repair (the Indictment being afterwards removed by *Certiorari*) is entitled to Costs if the defendant be convicted. (5 T. R., 33.)

594. 1827. *Rex v. Knight.* Indictment for obstruction—Indictment charged defendants with removing a culvert in Parish S., opposite to a mill, in a highway leading from S. to H.—Held that it sufficiently appeared from this that the *locus in quo* of the culvert was in S.—The word "from" as applied to a Parish in the description of a road is not of necessity exclusive. (6 L. J., (O. S.), M. C., 19; 7 B. & C., 413; 1 M. & R., 217.)

595. 1810. *Rex v. Lancashire JJ.* "Highway Act, 1773," § 47 [Repealed]—Indictment for non-repair—Parish found "Guilty"—Delay of 8 years in an application on behalf of 2 inhabitants on whom a fine had been levied for a *Mandamus* to Justices to cause a Rate to be made to re-imburse such inhabitants—Application refused—It ought to have been made within a reasonable time before any material change in the inhabitants—Various applications to Justices to make a Rate did not avoid the laches. (12 East, 366.)

596. 1816. *Rex v. Lincombe.* An Indictment for non-repair will not be quashed on an affidavit that the way is now in repair, but the defendant must plead "Guilty" and pay a nominal fine. (2 Chit., 214.)

597. 1802. *Rex v. Liverpool, Mayor.* Indictment for non-repair of a highway within a certain District, alleging prescriptive liability to repair all highways within such District except such as were repairable under certain Statutes, held bad because it did not aver that the highway in question was not within any of the exceptions—A count stating the liability of defendants to arise by virtue of an agreement with the owners of houses alongside the highway is bad, for the Parish, which is *prima facie* bound to repair all highways within its limits, cannot be discharged from such liability by any agreement with others. (3 East, 86.)

598. 1806. *Rex v. Loughton Inhabitants.* In order to be discharged from an Indictment for non-repair of a highway, parties convicted must produce an affidavit that the highway has been put in good repair since the conviction, and is likely to continue so. (3 Smith, 575.)

599. 1815. *Rex v. Mann.* After a verdict of "Not Guilty" on the merits in an Indictment for a

misdeemeanour (*e.g.*, a nuisance to a highway) no New Trial will be granted. (4 Maule & S., 337.)

600. 1804. *Rez v. New Windsor Inhabitants.* On a Rule to show cause why a presentment for non-repair should not be discharged, being discharged with Costs, and the Costs not being paid, the Court granted an attachment against the persons who had made the affidavits on which the Rule had been granted. (1 Smith, 168.)

601. 1794. *Rez v. Old Malton Inhabitants.* Indictment for non-repair—Fine—Fine expended and way still out of repair—The Court doubted their power to inflict a further punishment or fine on the same Indictment, but intimated that there might be a new Indictment and a new fine thereon. (4 B. and Ald., 470, n.)

602. 1816. *Rez v. St. Giles, Cambridge, Inhabitants.* Indictment for non-repair—Plea that another Parish has repaired and ought to repair—Plea held bad; it ought to have shown a consideration, for such an obligation could only arise upon a durable consideration. (5 Maule & S., 260.)

603. 1817. *Rez v. St. John's, Margate, Inhabitants.* Indictment for non-repair removed by the prosecutor—If the Judge at *Nisi Prius* certify that the defence was frivolous the prosecutor will have his Costs notwithstanding that the defendants have obtained a Rule *Nisi* to arrest the Judgment. (6 Maule & S., 130.)

604. 1794. *Rez v. St. Pancras Inhabitants.* An Indictment against a Parish for non-repair of one side of a road in a case where the other side lies in another Parish ought to state that each Parish is liable *ad medium filum viae*, and not that a certain part so many feet wide is out of repair—A Record of Conviction on an Indictment against a Parish for non-repair is *conclusive* evidence of the liability of that Parish, so as to exonerate another Parish indicted for not repairing the same road. (1 Peake, N. P., 219.)

605. 1833. *Rez v. St. Weonard's Inhabitants.* Indictment for non-repair—A road had been repaired by a Parish, and persons on horseback had used it, but there was no evidence that any carriage had ever gone along the whole length of it—Held that the Parish could not be convicted of non-repair on an Indictment alleging a way for carriages; there should have been a count charging it to be a way for horses. (5 C. & P., 579.)

606. 1834. *Rez v. St. Weonard's Inhabitants.* Indictment for non-repair of a pack-and-prime way—If it be proved that the way is a carriage-way then the Indictment contains a misdescription which entitles the defendants to an acquittal—In an Indictment for non-repair it is not necessary to state the *termini*; but if they are stated they must be proved. (6 C. & P., 582.)

607. 1818. *Rez v. Southampton, County of, Inhabitants.* Indictment for non-repair of a bridge—The Court is reluctant to stay Judgment on such an Indictment, and will not stay it generally but only till further order—If the trial of another Indictment against some third party is not proceeded with at once Judgment will be given on the original verdict. (2 Chit., 215.)

608. 1833. *Rez v. Sutton.* Indictment for non-repair—Verdict "Not Guilty"—Motion for New Trial on the ground of misdirection and improper rejection of evidence—New Trial refused, but Judgment suspended in order that a new Indictment might be preferred. (5 B. & Ad., 52; 2 N. & M., 57.)

609. 1815. *Rez v. Taunton St. Mary Inhabitants.* Several persons held entitled to Costs under 5 & 6 Will. & M., c. 11, § 3, as prosecutors of an Indictment (removed by *Certiorari*) for not repairing a highway; one as Constable of the Manor, the others as parties grieved, they having used the way for many years going from their homes to a market-town, and being

eventually obliged to use a more circuitous route by reason of the direct highway being out of repair—Upon an Indictment against a Parish for non-repair of a highway the right to repair may come in question so as to entitle the Parish to remove it by *Certiorari*, though the parish plead only "Not Guilty." (3 Maule & S., 465.)

610. 1802. *Rez v. Upper Papworth Inhabitants.* "Turnpike Act, 1773," § 33 [Repealed]—The Court of King's Bench may apportion a fine for non-repair of a highway between a Parish and a Turnpike Trust, even though the Indictment has been removed by *Certiorari* from Assizes. (2 East, 413.)

611. 1833. *Rez v. Upton-on-Secern Inhabitants.* An Indictment for non-repair must state affirmatively that the road is within the District bound to repair it—Stating a road to be "from and through" a place excludes the *terminus a quo*. (6 C. & P., 133.)

612. 1817. *Rez v. Wandsworth Inhabitants.* Indictment for non-repair—Defendants acquitted—In such a case the Court will not grant a New Trial—Yet under very special circumstances the entry of the Judgment will be suspended to enable the question to be reconsidered on a new Indictment without the prejudice of the former Judgment—The carrying of gravel over a road for the repair of admitted highways is *prima facie* evidence of the road traversed being itself a highway. (1 B. & Ald., 63.)

613. 1821. *Rez v. Yorkshire W. R. Inhabitants.* Indictment for non-repair—Plea by inhabitants of a County that a particular Township has immemorially repaired the highway at the end of a County bridge situate within the Township—Plea held good—In the case of a bridge it is not necessary to state any consideration for the prescription—*Rez v. St. Giles, Cambridge*, distinguished. (4 B. & Ald., 623.)

614. 1861. *Townsend v. Road.* "Highway Act, 1835," § 111—Defence of an Indictment—Held that when the expenses had been agreed to by the Vestry; allowance by 2 Justices was not necessary—"And" before "allowed" in the early part of the Section should be read "or." (30 L. J., M. C., 223 and 245; 10 C. B., (N. S.), 308 and 317; 5 L. T., 180.)

615. 1854. *Tryddyn Surveyors, In re; Harrison, Ex parte.* "Highway Act, 1835," §§ 95 & 103—Indictment for non-repair—Costs payable under § 95 are not recoverable by Distress against the Surveyor, but are to be paid out of a Rate—If needs be, a Rate must be levied. (23 L. J., M. C., 45; [Reg. v. Eytton] 3 E. & B., 390; [Reg. v. Flintshire JJ.] 22 L. T., (O. S.), 281.)

(5.) LIABILITY FOR NON-REPAIR.

616. 1876. *Reg. v. Greenhow Inhabitants.* Indictment for non-repair—Road carried away by landslip, but the line of it still discoverable—Held that there was no such total destruction of the road as would extinguish the liability to repair which ordinarily attaches to a parish—*Reg. v. Hornsea* distinguished. (45 L. J., M. C., 141; L. R., 1 Q. B. D., 703; 35 L. T., 363.)

617. 1854. *Reg. v. Hornsea Inhabitants.* A public highway had run down a hill to the sea-shore; by the encroachment of the sea the sea end of the way had been destroyed and the way ended abruptly at the edge of a cliff 20 ft. high—The surface of the road was in good repair down to the point of destruction—Held that as the substance of the road had disappeared there was nothing for the Parish to repair, and it was not bound to form a new communication with the shore—The obligation on a Parish in such cases is to make good something which *exists*. (23 L. J., M. C., 59; 2 C. L. R., 596; Deans. & P., C. C., 291; 6 Cox, C. C., 299; 22 L. T., (O. S.), 337.)

618. 1864. *Reg. v. Rathmines Commissioners.* A

trackway along a canal held a public highway repairable by the Commissioners though vested in a Canal Company and tolls levied by them in respect thereof. (16 Ir. C. L. R., 532; 11 L. T., 281.)

619. 1830. *Rex v. Mellor*. Road formed as a public highway and continuing such during the continuance of the Local Act under which it was formed—Held that when the Act expired the road ceased to be a public highway and that the duty of repairing it did not fall on the Parish by Common Law. (8 L. J., (O. S.), M. C., 109; 1 B. & Ad., 32.)

620. 1829. *Rex v. Paddington Vestry*. Local Act providing that previous to the adoption of a new road it must be certified by Surveyors appointed by the owner and the Vestry respectively—Road duly formed

and used by Public, but frontage only partly occupied by new houses—*Mandamus* to Vestry to appoint a Surveyor to certify, refused, as the road would for some time to come be chiefly a benefit to the owner only. (8 L. J., (O. S.), M. C., 4; 9 B. & C., 456.)

621. 1805. *Rex v. Skinner*. If a person removes an encroachment on a highway and repairs once the part of the highway injured by the encroachment and then leaves it to the Parish to repair in future he shall not afterwards be liable—But if he being the adjacent owner has for any length of time repaired the highway which was encroached upon, it will be evidence of his liability to repair unless he can give positive evidence of encroachment and so rebut the presumption. (5 Esp., 219.)

CHAPTER VIII.

BRIDGES.

(1.) DEFINITIONS OF.

622. 1857. *Bearer v. Manchester, Mayor*. A bridge may be so situated as to be a "street" within the meaning of a Statute. (26 L. J., Q. B., 311; 8 E. & B., 44; 29 L. T., (O. S.), 226.)

623. 1872. *North London Railway Co. v. St. Mary's, Islington, Vestry*. A bridge may be a "street" within the "Metropolis Management Act, 1855," § 109, though it crosses a Railway, and though before its erection a footway alone existed—Railway bridge held to have been dedicated as a highway, and Company liable to a Paving Rate. (Metropolis.) (27 L. T., 672; 37 J. P., 341; 21 W. R., 226.)

624. 1870. *Reg. v. Chart Inhabitants*. "Highway Act, 1835," § 5—A "Hundred bridge" is to be deemed a "County bridge" and therefore is not a "highway" under the Act, repairable by the Parish, and the hundred is not relieved by the Act from liability to repair. (39 L. J., M. C., 107; L. R., 1 C. C. R., 237; 11 Cox, C. C., 502; 22 L. T., 416.)

625. 1841. *Reg. v. Derbyshire Inhabitants*. Structure, 1275 yards long, consisting of a bridge proper over a river and a causeway with numerous arches, under some of which another stream was always running and under most of which there was usually some water, and which as a whole had always been repaired by the County, held properly described as a "bridge" and repairable by the County—It is not essential to a "bridge" in the legal sense that it should be a structure under all the arches of which water flows at all times. (11 L. J., M. C., 51; 2 Q. B., 745; 2 G. & D., 97.)

626. 1852. *Reg. v. Southampton County*. Bridges in the Isle of Wight—Local Act providing for the repair of bridges out of a Rate analogous to a County Rate—A foot-bridge formed of 3 planks about 9 ft. long with a hand-rail, and carrying a public footpath over a stream held not a "bridge" repairable by the County. (21 L. J., M. C., 201; 18 Q. B., 841; 19 L. T., (O. S.), 245.)

627. 1832. *Rex v. Derby, County of*. 43 Geo. III., c. 59, § 5—Turnpike Trustees are "individuals or private persons" within the meaning of this Section—Therefore a bridge erected by such Trustees after the passing

of the Act, but not under the direction or to the satisfaction of the County Surveyor is not a bridge which the County becomes liable to repair. (1 L. J., M. C., 15; 3 B. & Ad., 147.)

628. 1830. *Rex v. Oxfordshire Inhabitants*. The County is only bound by Common Law to repair bridges erected over water which answers the description of *flumen vel cursus aquæ*, i.e., water flowing in a channel between banks more or less defined, although occasionally such channel may be dry—Causeway with several arches passing between meadows which were occasionally flooded and reaching more than 300 ft. from end of main bridge, held not repairable by the County, so far as regarded the portion lying beyond the 300-ft. limit. (8 L. J., (O. S.), K. B., 354; 1 B. & Ad., 289.)

629. 1835. *Rex v. Whitney*. On an Indictment for non-repair a plea of "Guilty" to a former Indictment against the same Parish for non-repair of the same highway is conclusive evidence that the way is public—Evidence that a Parish did not put guard fences at the side of a road is not receivable on an Indictment which charges that the King's subjects could not pass as "they were wont to do," if no such fences existed before—A structure is not necessarily a "bridge" because it is *super flumen seu cursum aquæ*—Though there cannot be a County bridge where there is no *cursus aquæ*, yet it is a question for a Jury in each case whether an arch over a *cursus aquæ* is such a bridge or not—It is not to be inferred from the absence of parapets that the bridge is not a County bridge. (4 L. J., M. C., 86; 3 A. & E., 69; 4 N. & M., 594; 8 C. at Nisi Prius, 7 C. & P., 208.)

630. 1865. *Ward v. Gray*. A "floating bridge" drawn by chains is, in spite of its name, a "ferry-boat," and not a "bridge" in such a sense as to bring it within the "Mutiny Act, 1864," § 72. (34 L. J., M. C., 146; 6 B. & S., 345; 12 L. T., 305.)

(2.) APPROACHES TO BRIDGES.

631. 1838. *Reg. v. Lincoln, Mayor*. A party liable by prescription to repair a bridge is also *prima facie* liable to repair 300 ft. of highway at each end—Such presumption is not rebutted by proof that the

party has been known only to repair the fabric of the bridge, and that the only repairs known to have been done to the highway have been performed by Turnpike Commissioners. (7 L. J., Q. B., 161; 8 A. & E., 65; 3 N. & P., 273; 1 W. W. & H., 260.)

632. 1864. *Reg. v. Middle Level Commissioners.* Bridge erected by Commissioners under a Local Act and also part of the approaches washed away—Commissioners required by a subsequent Act to rebuild the bridge—Held that their obligation was limited to rebuilding the bridge, and as no provision was made for restoring the necessary approaches, Judgment was given for the defendants, the Court having no power to supply a *casus omissus* in the Act. (10 L. T., 375.)

633. 1811. *Rea v. Devon, County of, Inhabitants.* 22 Hen. VIII., c. 5—Part of Road repairable by Dorsetshire by reason of being within 300 ft. of a county bridge—Within these limits on the Devonshire side a stream crossed the road with a ford at the point of intersection—Subsidiary bridge constructed to take the place of the ford—Held that though this subsidiary bridge was less than 300 ft. from the Dorsetshire bridge it must be repaired by Devonshire within which it lay, otherwise a new burden would be thrown on Dorsetshire. (14 East, 477.)

634. 1813. *Yorkshire, W. R. v. Rea* [In Error]. By the Common Law as declared by 22 Hen. VIII., c. 5 and subsequent Bridge Acts, where the County is liable to repair a bridge it must also repair the highway at each end thereof to the extent of 300 ft.—If indicted for non-repair the County can only exonerate itself by showing that some one else is liable by prescription or tenure. (2 Dow., 1; 5 Taunt., 284.)

(3.) LIABILITY TO REPAIR.

635. 1842. *Baker v. Greenhill.* At Common Law the liability to repair bridges *Ratione tenuræ* is thrown ultimately on the owner of the land, though so far as the Public are concerned the occupier may be primarily liable—A covenant in a lease to pay "all taxes and deductions Parliamentary and Parochial imposed on the premises or on the lessor in respect thereof" held not to include payments made for such repairs, and lessee held entitled to recover from lessor the charge imposed upon him in consequence of the lessor's default in repairing. (11 L. J., Q. B., 161; 3 Q. B., 148; 2 G. & D., 435.)

636. 1836. *Dimes v. Arden.* Where a Lord of a Manor repairs a bridge which is repairable *Ratione tenuræ* he may recover contribution from a person who holds lands which were parcel of the demesnes at any time whilst the Manor was so charged; and in proportion to the value of the lands so held—Unless there is evidence that the demesne lands were severed from the Manor before the liability in respect of the Manor arose. (5 L. J., Q. B., 158; 6 N. & M., 494.)

637. 1626. *Huntingdon, County of, Case.* If no man by reason of tenure or otherwise ought to repair a bridge the County ought to do it. (Pop., 192.)

638. 1843. *Reg. v. Adderbury, East, Inhabitants.* Indictment for non-repair of an ancient bridge situated partly in Township A. and partly in Township B.—Allegation that the former part was out of repair and that Township A. was liable by prescription—Evidence that so much of the centre arch as was in A. had within living memory been widened by 6 ft.—Held that the Indictment against A. was sufficient and there was no variance between it and the evidence, as at all events the Township remained liable for the ancient portion—*Quære*, whether the widening was anything more than a mode of repair, so that the prescriptive liability extended over the added part? (13 L. J., M. C., 9; 5 Q. B., 187; 1 Dav. & Mer., 324.)

639. 1855. *Reg. v. Bedfordshire Inhabitants.* Indictment for non-repair of a bridge—Plea that A.

was liable, *Ratione tenuræ*—Hearsay evidence or evidence of reputation is admissible in questions relating to matters of public and general interest notwithstanding that private matters might be involved; therefore evidence of reputation that A. was liable was admissible. (24 L. J., Q. B., 81; 4 E. & B., 535; 3 C. L. R., 442; 24 L. T., (O. S.), 268.)

640. 1850. *Reg. v. Brecknock Inhabitants.* Indictment for non-repair of half of a County bridge—Transfer of a District on one side of a stream from one County to another specially for Parliamentary purposes held to involve the transfer of the liability to repair half of a bridge therein situated—In the absence of words in the Act determining the boundary, the ordinary rule of *medium filum aquæ* held to apply. (19 L. J., M. C., 203; 15 Q. B., 813 at p. 817; 4 New Sess. Cas., 272.)

641. 1878. *Reg. v. Buckinghamshire Inhabitants.* County bridge lengthened by Turnpike Trustees on account of Floods—No authority for this—The Trustees repaired the extension whilst individuals repaired the older part, *Ratione tenuræ*—Held that on the expiration of the Trust the repairs of the addition devolved on the County, under 33 & 34 Vict., c. 73, § 12. (42 J. P., 116.)

642. 1704. *Reg. v. Bucklugh, (Duchess of).* If a Manor be held by the service or tenure of repairing a common bridge or highway and the Manor be divided, the tenant of any parcel either of the demesnes or services is liable to the whole charge but may recover contribution—An agreement by the Lord to discharge the purchasers would only bind him and those who claim under him; and will not affect the remedy of the Public—Though the Manor comes into the hands of the Crown yet the duty continues as against every person claiming under the Crown. (1 Salk., 358.)

643. 1702. *Reg. v. Bucknall.* A man cannot be charged with the repairs of a bridge merely because he is Lord of a particular Manor—There must be proof of liability by prescription; or *Ratione tenuræ*—If a man liable *Ratione tenuræ* alienes any part of the land the alienee is liable to contribute whenever the bridge is out of repair, and the Information or Indictment may be against one liable to contribute. (2 Ld. Raym., 792; 7 Mod., 55.)

644. 1850. *Reg. v. Ely Inhabitants.* The general rule as to bridges built by private persons prior to 43 Geo. III., c. 59 is that if such bridges are used by the public the County is liable to repair them. (19 L. J., M. C., 223; 15 Q. B., 827; 4 New Sess. Cas., 222; 15 L. T., (O. S.), 412.)

645. 1842. *Reg. v. Gloucestershire Inhabitants.* 43 Geo. III., c. 59, § 5—Bridge over a Stream running through a sheet of water dammed up to protect adjacent meadows—If a bridge has been erected for the convenience of the Public passing over a stream the County must repair it, even though the bridge might not have been necessary when built. (Car. & Marsh., 506.)

646. 1845. *Reg. v. New Sarum Inhabitants.* Borough enlarged under the "Reform Act, 1832" and the "Municipal Corporations Act, 1835," by the addition of Parish which contained a County bridge—Held that the Borough did not by the enlargement of its boundary become liable to repair the bridge—The liability remained with the County. (15 L. J., M. C., 15; 7 Q. B., 941; 2 New Sess. Cas., 133.)

647. 1704. *Reg. v. Saintiff.* An Indictment does not lie for not repairing a bridge unless it be in a highway—"Highway" is a general term for all public ways, as well cart, horse, and foot-ways, and Indictment lies for any one of these ways, if they are common to all the Queen's subjects—If a way be in decay an Indictment must of necessity lie, for an Action on the Case will not lie, without special damage—By Common Right the County are bound to repair public

bridges. (6 Mod., 255; Holt, 129; [*Reg. v. Sainthill*] 2 Ld. Raym., 1174.)

648. 1878. *Reg. v. Somersetshire*. 43 Geo. III. c. 59, § 5—Bridge in the course of a Turnpike road raised by a Canal Company—Road disturnpiked—Held that the interference with the bridge by the Canal Company did not release the County from its ordinary liability, which accrued on the termination of the Turnpike Trust. (38 L. T., 452; 42 J. P., 501.)

649. 1876. *Reg. v. South-Eastern Railway Co.* Private Act—Obligation to maintain and repair a bridge held to include a duty to repair the roadway of the bridge, even though such roadway had been habitually repaired by the Parish. (32 L. T., 858.)

650. 1838. *Reg. v. Sutton*. Indictment for non-repair of a bridge *Ratione tenuræ*—A Record dated 20 Ed. III. of a trial whereat a Jury found that there was no evidence of any person being liable *Ratione tenuræ*, and a subsequent grant of Pontage, both held admissible evidence to negative a prescriptive liability in any person, and therefore the liability of the present defendant. (7 L. J., Q. B., 205; 8 A. & E., 516; 3 N. & P., 569.)

651. 1815. *Reg. v. Buckingham, (Marquis of)*. A bar across a bridge kept locked except in times of floods is conclusive evidence that the public have only a limited right to use the bridge at such times, and an Indictment for non-repair stating it to be used by the public "at their free will and pleasure" is faulty. (4 Camp., 189.)

652. 1824. *Reg. v. Devon Inhabitants*. A bridge used only on occasion of floods, and lying out of and alongside the road commonly used, held a public bridge which the County was liable to repair. (Ryan & M., 144.)

653. 1825. *Reg. v. Devon County, Inhabitants*. Liability on the part of a County to repair a bridge does not carry with it any liability to widen the bridge—*Reg. v. Cumberland*, (6 T. R., 194.) over-ruled. (4 L. J., (O. S.), K. B., 34; 7 D. & R., 147; 4 B. & C., 670.)

654. 1833. *Reg. v. Devonshire Inhabitants*. 43 Geo. III., c. 59, § 5—County bridge partly washed away and rebuilt by the Parish with the old materials, somewhat wider, but in the same line of passage, and placed on the old abutments—Held that though the bridge had been rebuilt without the privity of the County Surveyor it was nevertheless not a "new" bridge, and that the County was liable for its repair. (2 L. J., M. C., 74; 2 N. & M., 212; 5 B. & Ad., 383.)

655. 1810. *Reg. v. Bucks, County of, Inhabitants*. A County is bound to repair every public bridge within it unless it can show that some person, or Body Politic or Corporate, is liable—Every bridge in a highway is, by 22 Hen. VIII., c. 5, to be deemed a public bridge for this purpose. (12 East, 192.)

656. 1802. *Reg. v. Glamorgan County*. Bridge erected in a highway across a river by a private individual for his own benefit but used by the Public for 40 years—Held that the County was bound to repair. (2 East, 356, n.)

657. 1833. *Reg. v. Hendon Inhabitants*. A Parish may be indicted for non-repair of a bridge, without stating any other ground of liability than immemorial usage. (2 L. J., M. C., 55; 4 B. & Ad., 628.)

658. 1811. *Reg. v. Kent Inhabitants*. Indictment for non-repair of a bridge—Bridge built by a Navigation Company as a substitute for a ford which they had destroyed by deepening a river—Held that the Navigation Company and not the County were liable to repair the bridge. (13 East, 220.)

659. 1814. *Reg. v. Kent Inhabitants*. Mill and dam erected on a stream with the result that a public ford through a river was rendered impassable—Bridge erected by millowner and used by the Public—Held that the County and not the millowner must repair

it, the Public having derived benefit by the substitution of a bridge for a ford. (2 Maule & S., 513.)

660. 1813. *Reg. v. Kerrison*. An Indictment charging an individual with the repair of a bridge by reason of his being the owner and proprietor of a certain Navigation is not equivalent to charging him *Ratione tenuræ*. (1 Maule & S., 435.)

661. 1815. *Reg. v. Kerrison*. Highway cut by Navigation Commissioners, who thereupon built a bridge over the cut—Held that the Navigation, and not the County must keep the bridge in repair, there being no benefit derived by the Public from the substitution of the bridge for the highway. (3 Maule & S., 526.)

662. 1831. *Reg. v. Lancashire Inhabitants*. 43 Geo. III., c. 59, § 5—This Section only applies to bridges newly built, not to bridges merely widened or repaired since the Act—Turnpike Trustees having built a bridge where a culvert would have sufficed but a bridge was preferable, held that the County could not refuse to repair such bridge on the ground that it was not absolutely necessary. (1 L. J., M. C., 1; 2 B. & Ad., 813.)

663. 1811. *Reg. v. Lindsey Inhabitants*. Highway crossed by a fordable stream—Bed of stream deepened by a Canal Company whereby a bridge was rendered requisite which they duly built—Company, not the County, held liable to repair the bridge. (14 East, 317.)

664. 1821. *Reg. v. Machynlleth and Penegoes Inhabitants*. The Quarter Sessions cannot impose more than one fine for non-repair of a bridge—A fresh Indictment is requisite if the first fine is inadequate. (4 B. & Ald., 469.)

665. 1823. *Reg. v. Machynlleth and Penegoes*. Indictment stating that an ancient bridge within two Parishes was out of repair, and that the inhabitants of the Parish and Town aforesaid, from time immemorial, by reason of the tenure of certain lands in the Parish and Town had repaired the bridges—Indictment held bad, for it did not appear that the bridge was within the Town, and therefore the inhabitants of the Town were not liable unless a special consideration were shown, inasmuch as the inhabitants not being incorporated could not hold land, and therefore the Common Law liability did not attach. (2 B. & C., 166; 3 D. & R., 388.)

666. 1832. *Reg. v. Middlesex Inhabitants*. Ancient bridge repairable *Ratione tenuræ*—Separate footbridge constructed, about a century before the Indictment, outside the ancient bridge but attached to it—Held that the footbridge was not parcel of the ancient bridge, and that he who was liable to repair the ancient bridge *Ratione tenuræ* was not liable for the footbridge, and therefore that the County must repair it. (1 L. J., M. C., 16; 3 B. & Ad., 201.)

667. 1814. *Reg. v. Northampton County*. A bridge may be a public bridge which is used by the public at all times when it is dangerous to pass through the river—In support of a plea of "Not Guilty" the defendants may give evidence, *quantum valeat*, of the bridge having been repaired by private individuals. (2 Maule & S., 262.)

668. 1817. *Reg. v. Osmestry Hundred*. A Hundred may be charged by prescription with the repair of a bridge; and this although it appears that by a Statute within legal memory one of the Townships, parcel of the Hundred, was then annexed to it. (6 Maule & S., 361.)

669. 1812. *Reg. v. Oxfordshire Inhabitants*. Indictment for non-repair of a bridge—Plea, that M. was liable, *Ratione tenuræ*—The plea is not sustained by evidence that M.'s estate was part of a larger estate which part he purchased, the rest remaining in the hands of the former owner, who as well before the sale as after had repaired the bridge in question—Where in such a case the County was found "Guilty"

the Court gave leave to stay the Judgment on payment of Costs, until another Indictment was preferred to try the liability. (16 East, 223.)

670. 1825. *Rea v. Oxfordshire*. Indictment against a County for non-repair of a bridge erected by Turnpike Trustees in a road where there had not previously been a bridge—Held that the County was liable, the bridge having been built for public purposes in a public highway, and this notwithstanding that the Trustees possessed available funds—County might have a remedy over against the Trustees. (3 L. J., (O. S.), K. B., 198; 4 B. & C., 194; 6 D. & R., 231.)

671. 1810. *Rea v. Salop Inhabitants*. The County is *prima facie* bound to repair all public bridges within it, whether foot, horse, or carriage bridges, unless it can be shown that others are bound to repair particular bridges. (13 East, 95.)

672. 1812. *Rea v. Somerset Inhabitants*. Local Act empowering Turnpike Trustees to replace an old by a new bridge and to take tolls and lay out the money thereby received in building the new bridge, and providing that when the powers of the Act ceased, the new bridge should be repaired by such persons as were liable by law to repair the old bridge—Held that during the time the powers of the Act were being exercised by the Trustees, the County was not liable to repair the new bridge. (16 East, 305.)

673. 1811. *Rea v. Stratford-on-Avon, Mayor*. A Corporation by prescription held liable by prescription and not *Ratione tenuræ* to repair a bridge—An Indictment charging the Corp ration as *immemorially* bound to repair held sustainable. (14 East, 348.)

674. 1810. *Rea v. Surrey Inhabitants*. Parish bound by prescription to repair a wooden footbridge used by carriages in times of flood only—Wider bridge built of brick by Turnpike Trustees on same site and constantly used by all carriages for the 40 years since its erection—Indictment against County for non-repair—Plea, that Parish had immemorially been liable—Held that such plea was not supported by evidence of the above facts; and that County was liable. (2 Camp., 455.)

675. 1835. *Rea v. Sutton*. An infant seised of lands in the actual possession of his Guardian "in-socage" is not indictable for the non-repair of a bridge *Ratione tenuræ*, but the Guardian is—*Quære*, whether an owner, who is not the occupier, of lands charged with the repair of a bridge can be indicted for non-repair? (4 L. J., K. B., 215; 5 N. & M., 353; 3 A. & E., 597.)

676. 1770. *Rea v. Yorkshire, W. R., Inhabitants*. The County are of common right bound to repair a new bridge built by a private person if it be of public utility. (5 Burr. 2594; 2 W. Bl., 685.)

677. 1773. *Rea v. Yorkshire, W. R., Inhabitants*. When it does not appear who ought to repair a bridge it is certain in such a case that, at Common Law, the duty is on the County. (Lofft, 238.)

678. 1788. *Rea v. Yorkshire, W. R.* Footbridge enlarged to a carriage bridge—Held that a Township liable to repair the footbridge continued liable *pro rata*, but no farther. (2 East, 353, n.) [But see *Rea v. Surrey*, 2 Camp., 455.]

679. 1802. *Rea v. Yorkshire, W. R., Inhabitants*. If a bridge be of public utility and used by the public, the County must repair it, though built by Trustees under a Turnpike Act or by an individual—*Aliter* if built by an individual for his own benefit, and so continued without public utility though used by the public—A bridge built in a public way without public utility is indictable as a nuisance—And so, if built colourably, in an imperfect or inconvenient manner, in order to throw the onus of reconstruction or repair on the County. (2 East, 342.)

680. 1840. *Surrey Canal Co. v. Hall*. Canal Act requiring Company to maintain bridges over their

canal where it intersected highways—Bridge available for carriages erected in compliance with the Act at a spot where there had been only a bridle-way—Such bridge long used by carriages generally though designed only for carriages belonging to the tenants of a particular estate—Toll subsequently imposed, the traffic having become heavy as the neighbourhood became populous—Trespass for passing without paying toll—Direction by the Judge that supposing the bridge in question to have been originally erected for certain tenants in particular, yet if in consequence of the acts of the Company an idea grew up that the road had been dedicated the Jury might find such dedication—Held that this was not a misdirection and that the evidence warranted the Jury in finding a dedication. (9 L. J., C. P., 329; 1 Scott, N. R., 264; 1 M. & G., 392.)

(4.) LEGAL PROCEEDINGS CONNECTED WITH BRIDGES.

681. 1805. *Harrison v. Parker*. Bridge built by private individual but dedicated to the public—Held that the property in the materials so far continued in him that he could maintain an Action against a person who wrongfully removed them. (6 East, 154; 2 Smith, 262.)

682. 1854. *Mackinnon v. Penson*. No Action for damages will lie against a County Surveyor for personal or pecuniary injury resulting from non-repair of a County bridge. (23 L. J., M. C., 97; 9 Ex., 609; 22 L. T., (O. S.), 318.)

683. 1858. *Manley v. St. Helen's Canal Co.* Highway intersected by Canal and gap made good by a swing bridge—The Canal Act authorised the Company to take tolls and gave a public user—Bridge opened for a boat in the dark and a person coming along the road drowned—Action under "Lord Campbell's Act" against the Company held maintainable on the grounds that the Company had a beneficial interest in the tolls, and that the bridge was improperly left unfenced—Held also that even if a bridge were sufficient at the time of construction the Company were bound to alter it so as to adapt it to increased traffic—The Jury were warranted in finding a bridge insufficient which when open left an unfenced gulf in the highway. (27 L. J., Ex., 159; 2 H. & N., 840.)

684. 1859. *Newport Bridge, In re*. 43 Geo. III., c. 59, § 2—*Mandamus* to Justices to order a bridge to be widened, refused, the enactment being permissive and not imperative—A presentment is a condition precedent to making such an order. (29 L. J., M. C., 52; 2 E. & E., 377; [*Reg. v. Monmouthshire*] 1 L. T., 131.)

685. 1862. *Nicoll v. Allen*. Bridge erected by a private individual under a Private Act—Tolls leviable—Power to levy Ferry Tolls whilst bridge was under repair—The bridge having become ruinous and impassable, the proprietor (the defendant) established a Ferry service and took no steps to repair the bridge—*Mandamus* to defendant to rebuild the bridge refused, but held that he was liable to an Action at the suit of a person suffering special damage by reason of the bridge remaining impassable, while the defendant was in receipt of the Tolls. (31 L. J., Q. B., 283; 1 B. & S., 934; 6 L. T., 699.)

686. 1850. *Reg. v. Betts*. Building a bridge partly in the bed of a navigable river is not necessarily a nuisance—The question is one of fact for a Jury whether or no the navigation is thereby impeded. (16 Q. B., 1022; 4 Cox, C. C., 211.)

687. 1849. *Reg. v. Brecknock Inhabitants*. The "Highway Act, 1773," made applicable to bridges by the "County Bridges Act, 1803," is still so applicable notwithstanding that it is repealed as to highways by the "Highway Act, 1835"—Therefore one Justice may still present a County bridge which is out of repair.

(18 L. J., M. C., 123; 15 Q. B., 813; 3 New Sess. Cas. 434.)

683. 1844. *Reg. v. Merionethshire Inhabitants*. The "Highway Act, 1773," § 64, is kept alive as regards bridges by the effect of the "County Bridges Act, 1803," § 1, though repealed generally by the "Highway Act, 1835," § 1—Therefore the power of a Judge who tries an indictment for non-repair, removed by *Certiorari*, to certify for Costs in the case of a frivolous defence continues. (13 L. J., M. C., 158; 6 Q. B., 343; 1 New Sess. Cas., 316.)

689. 1828. *Row v. Buckingham JJ.* Pending an Indictment at the instance of a Parish against a County for non-repair of a bridge, the object being to determine whether the County or the Parish was liable, the Court refused to grant the defendants an inspection of Parish books and documents relating to former repairs of the bridge. (6 L. J., (O. S.), K. B., 346; 2 M. & R., 412; 8 B. & C., 375.)

690. 1788. *Russell v. Men of Devon*. No Civil Action lies against a County at the suit of an individual for an injury sustained in consequence of a County bridge being out of repair—Where an Action is brought against a Corporation for damages, the damages are to be recovered out of the corporate estate, and not against the individual corporators; and even if a County can in any sense be considered a corporation, there is no corporate fund out of which a claim can be satisfied. (2 T. R., 667.)

691. 1828. *Wiggins v. Boddington*. Swing bridge on public highway—The owners of such a structure are bound, in the passing of vessels, to use all reasonable means (including number of men employed to assist and number of ships passed at a time) to prevent unnecessary delay—If they do not do all which can reasonably be expected, any person obstructed may recover damages for injury sustained. (3 C. & P. 544.)

BOOK II.

PART I

Statutes relating to Lighting.

FOR a statement of the principles upon which these Statutes have been arranged and printed, see the Introduction to Part I. of Book I. (*ante*). The Lighting of Urban Districts is not dealt with here, because I have already handled that branch of the subject in my *Digest of the Law relating to Public Health and Local Government*, to which work it more properly belongs. Whereas the "Highway Acts" concern various Urban and Rural Authorities alike, the "Lighting Act, 1833," now chiefly affects only Parishes in Rural Sanitary Districts.

The Sections of the "Lighting Act, 1833," relating to Watching, have been entirely omitted. This has been done because they are virtually obsolete, having been, in effect, superseded by the Statutes establishing the County Police force of England and Wales.

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3 & 4 WILL. IV., c. 90.

*Revised
Statutes,
vol. vii., p. 565.*

An Act to repeal an Act of the 11th Year of His late Majesty King George the Fourth, for the lighting and watching of Parishes in England and Wales, and to make other Provisions in lieu thereof. (August 28, 1833.)

* * * * *

Act applicable to all Parishes.	<p>2. And whereas it is desirable to make provision for the lighting and watching of the several Parishes in England and Wales; be it enacted, That this Act, and the several provisions thereof, shall apply to and may be adopted, under and subject to the regulations herein contained, by all or any or either of the Parishes in England and Wales.</p>
On Application of Three rated Inhabitants, Churchwardens to convene a Meeting to determine whether Act shall be adopted.	<p>5. From and after the passing of this Act, upon the application in writing of 3 or more of the ratepayers of any Parish, it shall be lawful for the Churchwardens thereof, and they are hereby required, within 10 days after the receipt of such application as aforesaid, to appoint and notify a time and place for a public meeting of the ratepayers of the said Parish, for the purpose of determining whether the provisions in this Act contained shall be adopted and carried into execution in the said Parish:</p> <p>Provided always, that the time appointed for holding the said meeting shall not be less than 10 days and not more than 21 days from the time of the said application so being delivered to them as aforesaid, and that notification of the time and place of meeting shall be made by forthwith affixing a notice on the principal outer door of every Parish Church or Chapel situate within such Parish, or on the usual place of affixing notices relating to the parochial affairs of any such Parish, and also by publication of the same in the Parish Church or Chapel on the Sunday previous to the day appointed for holding such meeting, during or immediately after Divine service.</p>
Chairman to be elected.	<p>6. Such person as may be elected by the ratepayers present shall preside as Chairman at such meetings; and that if any controversy shall arise at such meeting as to the qualification or right of voting or eligibility of any person claiming to vote, or as to the qualification or eligibility of any candidate, such controversy shall be determined by the Chairman presiding at such meeting.</p>
Duties of Chairman.	<p>7. The Chairman who shall preside at any meeting assembled as herein directed shall read or cause to be read the requisition whereupon the meeting shall have been summoned, and shall require the persons assembled thereat to determine by majority of votes, as herein mentioned, whether the provisions of this Act, as herein set forth, shall or shall not be adopted and acted upon within such Parish:</p> <p>Provided nevertheless, that it shall be lawful for the majority of the ratepayers present to adjourn such meeting from time to time.</p>
If Meeting determine to proceed, Act to take effect.	<p>8. If at any such meeting it shall be determined by a majority consisting of two-thirds of the votes of the ratepayers present at such meeting that the provisions of this Act shall be adopted, then and in such case such provisions shall from thenceforth take effect and come into operation in such Parish:</p> <p>And it shall forthwith be determined that a certain number not being more than 12 nor less than 3 Inspectors shall be elected to carry such purposes into effect;</p> <p>And the number of Inspectors so determined upon shall be elected in manner herein mentioned.</p>
Money to be raised.	<p>9. The ratepayers of such Parish shall at their first meeting, or at some adjournment thereof, and so on from time to time in every succeeding year at a meeting to be called for that purpose in manner herein directed, fix and determine the total amount of money which the Inspectors shall have power to call for in any one year, in order to carry into effect the Provisions of this Act, such sum to be raised in the manner herein directed, upon the full and fair annual value of all property rateable for the relief of the poor within such Parish, such full and fair annual value to be computed according to the last valuation for the time being acted upon in assessing the Poor's Rate for the said Parish:</p>
Poll as to Adoption of Act.	<p>Provided nevertheless, that any 5 rated inhabitants, qualified to vote as herein mentioned, may, at such meeting or adjournment thereof, in writing given to the Chairman of the said meeting, demand a poll to be taken of the ratepayers qualified to vote upon the question as to whether this Act and the provisions thereof, or any part thereof, shall be adopted in such Parish,</p>

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and also as to the amount of money to be raised in the succeeding year for the purposes thereof, and the number of Inspectors to be elected as determined at such meeting, and which said demand of a poll the said Chairman is required forthwith to deliver to the Churchwardens of the said Parish.

10. The said Churchwardens of the said Parish shall, on the first Sunday next after the receipt of such demand of a poll, affix or caused to be affixed a notice on the principal outer door of every Parish Church or Chapel situate within such Parish, or on the usual place of affixing notices relating to parochial affairs of any such Parish, specifying some day, not earlier than 10 days and not later than 21 days after such Sunday, and at what place or places within the said Parish, the ratepayers are required to signify their votes for or against the adoption of this Act, or such part thereof as may have been agreed upon at the said meeting, as well as with respect to the annual amount of money to be raised in the succeeding year for the purposes thereof, and the number of Inspectors to be elected as determined at such meeting, which votes shall be received on 2 successive days, commencing at 8 of the clock in the forenoon and ending at 4 of the clock in the afternoon of each day; and the said notice shall be to the following effect:—

“THE churchwardens of this Parish [*insert the name of the Parish*] having received a demand for a poll, duly signed according to the Provisions of an Act of the 4th Year of the Reign of King William IV., intituled ‘An Act,’ &c. [*setting out the Title of the Act*], the ratepayers of this Parish of [*insert the Name of the Parish*] are hereby required, all and each of them, on the _____ day of _____ next, and the following day, to signify to the said Churchwardens, by a declaration, either printed or written, or partly printed or partly written, addressed and delivered to one of the Churchwardens at [*insert here the place*], their votes for or against the adoption of the aforesaid Act, or so much thereof as relates to watching or lighting [*as the case may be*], the amount of the money to be raised in the succeeding year for the purposes thereof being [*here insert the sum agreed on at the meeting*], and the number of Inspectors to be elected [*insert the number also agreed on*], such sum and such number of Inspectors being fixed and determined upon at a meeting of the ratepayers called pursuant to the said Act. (Signed) _____ Churchwardens.”

Notice of Poll.

Form of Notice.

11. The said declaration shall be to the following effect:—

“I A. B. of _____ Street [*or place or house*] in this Parish of _____ vote [*for or against, as the case may be,*] the adoption of the Act of the 4th Year of his Majesty King William IV., intituled ‘An Act,’ &c. [*set out Title of the Act*], or so much thereof as relates to watching or lighting [*as in the notice*], the amount of the money to be raised in the succeeding year for the purposes thereof, being [*as in notice*], and the number of Inspectors to be elected [*as in notice*].”

Form of Declaration.

12. The said Churchwardens shall carefully examine the votes to them delivered as aforesaid, and shall compare them with the last Rate made for the relief of the poor of the said Parish, and shall be empowered to call before them and examine any Parish officer touching the said votes, or any ratepayer so giving his vote, and after a full and fair summing-up of the said votes shall, by public notice according to the form and manner hereafter prescribed, declare whether or not two-thirds of the votes given have been given in favour of the adoption of the said Act (or so much thereof as relates to watching or lighting, as in the notice), and also as to the sum of money to be raised in the succeeding year, and the number of Inspectors to be elected to be (as in the notice):

Churchwardens to examine Votes, and declare whether Two-thirds are in favour of adopting Act.

Provided always, that the whole number of persons voting shall be a clear majority of the ratepayers of the Parish:

Provided also, that in case of a poll being demanded as aforesaid, the adoption or non-adoption of this Act, with the sum to be raised, and the number of Inspectors to be elected as aforesaid, shall be decided by such number of votes as aforesaid:

Provided also, that the expenses incurred by the churchwardens in calling such meeting, giving the notices as aforesaid, and in taking such poll, shall be paid out of the Rate collected for the relief of the poor in the said Parish.

13. Any of the ratepayers of the aforesaid Parish, not exceeding 5 together, may inspect, at or in the Vestry room or in some convenient place within the same Parish, and they are hereby empowered to inspect, the votes so given for and against the adoption of this Act, with the sum to be raised, and number of Inspectors to be elected as aforesaid, at all seasonable times within one month after such notice shall have been given;

Ratepayers may inspect Votes.

And the Churchwardens of the said Parish are hereby required carefully to preserve the said votes, and freely to permit and allow the examination thereof by the aforesaid ratepayers of the said Parish at all seasonable times within the period aforesaid.

14. No person shall be deemed a ratepayer, or be entitled to vote, or do any other act, matter, or thing as such, under the provisions of this Act, unless he or she shall have been rated to the relief of the poor for the whole year immediately preceding his so voting or otherwise acting as such ratepayer, and shall have paid all the parochial Rates, Taxes and Assessments due from him or her at the time of so voting or acting, except such as have been made or become due within the 6 months immediately preceding such voting.

No person to vote unless rated One Year.

15. Notice of the adoption of this Act (or any part thereof, specifying it), with the amount of the sum to be raised in the succeeding year, and the number of Inspectors to be elected by any Parish, shall be forthwith given by the Churchwardens for the time being of the said Parish by affixing a notice of the same to the principal door of every Church and Chapel within the said Parish, or on the usual place of affixing notices relating to the parochial affairs of such Parish;

Notice of Adoption of Act.

And in such case the provisions of this Act shall from thenceforth take effect and come into operation in such Parish:

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Act may be
abandoned.

Provided always, that it shall be lawful for the inhabitants present at any meeting called in manner herein directed, at any time after the expiration of 3 years from the time when the provisions of this Act shall have been adopted, to determine that the provisions of this Act shall, from and after a day to be fixed upon at such meeting, cease to be acted upon ;

In which case, from and after such last-mentioned day, the provisions of this Act shall no longer be in force in such Parish :

Provided nevertheless, that the provisions in this Act contained shall remain and continue in force for the purpose of collecting and recovering any Rate which may have been previously made ;

And if on the abandonment and ceasing to act upon the provisions of this Act there shall be any balance in the hands of the said Inspectors, after defraying the expenses incurred in carrying into effect the provisions of this Act, the said balance shall be paid over to the Overseers of the Poor of the said Parish, to be applied in aid of the Poor Rates of the said Parish.

If Meeting de-
termine against
Act.

16. In case any such meeting convened as aforesaid, or, in case of a poll having been demanded as aforesaid, a majority of two-thirds of the votes as aforesaid, shall not have determined to adopt the Provisions of this Act, it shall not be lawful for the inhabitants to meet again in less than one year from the period at which such meeting shall have been so convened as aforesaid.

Election of
Inspectors.

17. The Inspectors herein mentioned shall be elected in manner following ; (that is to say,) the Churchwardens of any Parish adopting the provisions of this Act shall, in the manner herein first directed, forthwith call a meeting of the ratepayers of such Parish, and each candidate, being a person who shall reside within such Parish, and who shall have been assessed or charged by the last Rate made for the relief of the poor in respect of a dwelling-house or other tenement or premises of the annual value, according to the said Rate, of £15 or more, shall be eligible to be elected an Inspector for the purposes of this Act, and shall be proposed at the said meeting by some person duly qualified to vote thereat, and shall be seconded by some other person in like manner qualified ;

And if more candidates than the number of Inspectors authorised to be elected shall be proposed, and a poll shall be demanded by any 10 persons qualified to vote on behalf of any such candidates, then the Chairman shall open and proceed with such poll, and in a book or books prepared for that purpose, which book or books the Churchwardens are hereby required to cause to be prepared, shall enter or cause to be entered the name of all such candidates, and the name of every person duly qualified to be present and vote who shall desire to vote, together with his description and abode, and shall register the vote of every such person for every or any such candidate as every such person may respectively require ;

And if the votes of all the persons duly qualified and desirous to vote cannot be conveniently collected and registered by 4 of the clock of the same day upon which the poll shall have been commenced, then the Chairman shall at that hour adjourn such poll to the day next succeeding, unless such day shall be a Sunday, Christmas Day, or Good Friday, and in that case to the day following, and then proceed to collect and register the votes of all persons duly qualified and applying to vote :

Provided nevertheless, that the poll shall finally close at 4 of the clock on the day to which it shall have been adjourned, or sooner, provided all persons duly qualified and desirous to vote shall have voted, and after the lapse of one hour without any person offering to vote ;

And as soon after the close of the poll as may be possible the result thereof shall be declared at the place where the election may have been holden, and certified by the Chairman to the Overseers of the Poor ;

And the said Churchwardens shall be reimbursed all such reasonable charges and expenses as may be incurred in providing clerks and books, and otherwise in the performance of the duties hereby required of them by the candidates at the said election for the said office :

Provided nevertheless, that if the provisions of this Act are adopted at the meeting first called for that purpose, the said Inspectors may be appointed at the same time by the ratepayers of such Parish then present, unless a poll should be demanded, and if such poll should be demanded it shall be proceeded with as herein directed.

At the end of
12 months the
Inspectors to
give Notice to
Churchwardens
that they are
ready to pro-
duce their ac-
counts.

18. In every Parish adopting the provisions of this Act the Inspectors shall, within one month next after the expiration of 12 calendar months from the day of such adoption, give notice to the Churchwardens of the said Parish that they are ready to produce their accounts and vouchers for the previous year, and thereupon the said Churchwardens shall give due notice, in the manner required with respect to the first meeting to be held under this Act, that a meeting of the ratepayers of the said Parish will be held at an hour and place in the said notice to be mentioned, on some day, not being a Sunday, within 10 days from the receipt of such notice, for the purpose of the said Inspectors producing such accounts and vouchers, and for the election of Inspectors for the execution of this Act, and for determining the amount of the money to be raised for the purposes of this Act, for the current year ;

Meetings in
future years.

And in every future year such meeting shall, for the purposes aforesaid, be held on the same day in the corresponding month, except such day should fall on a Sunday, and then on the day following.

Inspectors to
produce Ac-
counts.

19. At such annual meeting the said Inspectors shall produce their accounts and vouchers of all monies received and paid by virtue of this Act for the previous year ;

And a duplicate or copy of such accounts, verified on oath before any 2 Justices by the said Inspectors or any 2 of them, shall be deposited with the said inspectors, and shall be open at all reasonable times to the inspection of all parties interested ;

And at such annual meeting one-third of the Inspectors, or as near thereto as the number

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appointed will admit of, shall go out of office in rotation : and in place of such Inspectors so going out of office a like number of other Inspectors shall be elected :

Provided always, that any of such outgoing Inspectors shall be re-eligible, and may be re-elected, and shall in such case continue to act and remain in office, any thing herein contained to the contrary notwithstanding.

20. The Chairman appointed to preside at such annual meeting shall proceed in such manner as the Chairman at the first meeting to be held under this Act is hereinbefore directed to proceed at the election of the Inspectors to be first appointed for the execution of this Act, and shall decide on questions which may arise as to the eligibility or qualification of any person whatsoever, and as to all matters whatsoever connected with the said election, and shall declare the result of the same as aforesaid.

21. In case any Inspector shall die, or become disqualified by change of residence or otherwise, or shall neglect to act, and in case of any casual vacancy happening in any manner whatever, so that the number of Inspectors shall be reduced to less than 3, notice shall be immediately given by the acting Inspectors to the Churchwardens of the Parish, who shall forthwith, in the manner directed by this Act, call a meeting of the rated inhabitants as aforesaid for the purpose of filling up such vacancy or vacancies.

22. The Inspectors for executing this Act in any Parish shall meet on the 1st Monday in every month, at noon, at some convenient place or office previously publicly notified ;

And at such monthly meeting it shall be lawful for any inhabitant rated to the relief of the poor of any such Parish to appear there, and prefer any matter of complaint which he may think proper to make concerning any matter or thing done by force or in pursuance of or under pretence of the provisions of this Act.

23. Such Inspectors shall meet at all other times and so often as at any previous meeting shall be determined upon ;

And it shall be at all times competent for any one Inspector, when 3 Inspectors only shall have been appointed, and in all other cases for any 2 Inspectors, by writing under his or their hands, to summon, upon at least 48 hours' notice, the inspectors for any special purpose therein named, and for such time as shall be therein named ;

And that at all meetings of such Inspectors any number not less than one-third of the whole number when more than 3 Inspectors shall have been appointed, and when only 3 Inspectors shall have been appointed then not less than 2 Inspectors, shall constitute a quorum for transacting business.

24. It shall be lawful for the said Inspectors elected in any Parish under this Act for the time being, and they are hereby authorised and required, to appoint, during pleasure, such Treasurer and other officers as they shall think necessary for effecting the purposes of this Act, and to remove and displace the same, and to hire and rent a sufficient office or house or room for holding their meetings and transacting their business, and also to appoint suitable salaries, wages, and allowances to and for such Treasurer and other officers, and also to agree for a reasonable rent for such office or house or room, and to pay such salaries, wages, and allowances, and such rent, out of the monies received by the Inspectors under the authority of this Act :

Provided nevertheless, that no person shall at the same time hold two offices or situations under the said Inspectors.

25. It shall be lawful for the said Inspectors, or any 2 or more of them, and they are hereby required, to take security from the Treasurer to be appointed by virtue of this Act for the due execution of his office of Treasurer, according to the true intent and meaning of this Act, which security shall be to the full amount of the sum likely to be in the hands of the said Treasurer at any one time ;

And in case any such Treasurer shall neglect or refuse for the space of 3 weeks next after his appointment to give or offer such security to the satisfaction of the said Inspectors, then the appointment of every such person so neglecting or refusing shall be null and void to all intents and purposes, and the said Inspectors shall within 3 weeks then next assemble and appoint some other fit and proper person to the office of Treasurer, instead of the person so refusing or neglecting as aforesaid, and shall so assemble and appoint from time to time until security shall be given to their satisfaction as aforesaid.

26. Every such Treasurer and other officer appointed by virtue of this Act shall under his respective hand, and at such time or times and in such manner as the said Inspectors shall direct, deliver to the said Inspectors, or such person as they shall appoint, true and perfect accounts in writing of all matters and things committed to his charge by virtue of this Act, and also of all monies which shall have been by such officer received by virtue of or for the purposes of this Act, and of how much thereof shall have been expended and disbursed, and for what purposes, together with proper vouchers for such payments, and that every such officer shall pay all such monies as shall remain due from him to the Treasurer for the time being, or to such person or persons as the said Inspector shall appoint to receive the same ;

And if any such Treasurer, officer, or other person shall refuse or neglect to make and render such account, or to produce and deliver up the vouchers relating to the same, or to make payments as aforesaid, or shall refuse or wilfully neglect to deliver to the said Inspectors or to such person or persons as they shall appoint to receive the same, within 3 days after being thereunto required by the said Inspectors by notice in writing under the hands and seals of any 2 or more of the said Inspectors given to or left at the last or usual place of abode of such officer, all books, papers, and writings in his custody or power relating to the execution of this Act, or to give satisfaction to the said Inspectors or such other person or persons as aforesaid respecting the same, then and in every such case, upon complaint made by the said Inspectors,

One-third to go out of Office.

Chairman to decide Questions of Eligibility, &c.

Filling up of Vacancies in the Inspectors.

Inspectors to meet monthly.

Special Meetings of Inspectors.

Quorum.

Inspectors to appoint Officers, and rent an Office.

Security to be taken from Treasurer.

Officers to account.

Proceedings against Officers neglecting to account.

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or by such person or persons as they the said Inspectors shall appoint for that purpose, of any such refusal or wilful neglect as aforesaid, to any Justice of the Peace, such Justice may and he is hereby authorised and required to issue a summons under his hand and seal for the officer so refusing or neglecting to appear before 2 Justices of the Peace;

And upon the said officer appearing, or having been so summoned and not appearing without some sufficient and reasonable excuse, or not being found, it shall be lawful for the said Justices to hear and determine the matter in a summary way;

And if, upon confession of the party, or by the testimony of any credible witness or witnesses upon oath, (which oath such Justices are hereby empowered to administer,) it shall appear to such Justices that any monies remain due from such officer, such Justices may and they are hereby authorised and required, upon non-payment thereof, by warrant under their hands and seals, to cause such money to be levied by distress and sale of the goods and chattels of such officer;

And if no goods and chattels of such officer shall be found sufficient to answer and satisfy the said money, and the charges of distraining and selling the said goods and chattels, or if it shall appear to such Justices that such officer had refused or wilfully neglected to render and give such account, or to produce the vouchers relating thereto, or that any books, papers, or writings relating to the execution of this Act remained in the hands or in the custody or power of such officer, and he refused or wilfully neglected to deliver or give satisfaction respecting the same as aforesaid, then and in every such case such Justices shall and they are hereby required to commit such offender to the Common Gaol or House of Correction for the county, city, or place where such offender shall be or reside, there to remain, without bail or mainprize, until he shall have given a true and perfect account as aforesaid, or until he shall have paid such monies as aforesaid, or compounded with the said Inspectors for such money, and shall have paid such composition in such manner as they shall appoint, (which composition the said Inspectors are hereby empowered to make and receive,) and until he shall have delivered up such books, papers, and writings, or given satisfaction in respect thereof, to the said Inspectors or to such other person or persons as aforesaid;

But no such offender shall be kept or detained in such Common Gaol or House of Correction for want of sufficient distress by virtue of this Act for any longer space or time than 3 calendar months.

Commitment of
Offender not to
discharge his
Sureties.

27. No prosecution or commitment, under the provisions of this Act, of any Treasurer or other officer or person to be appointed under the powers of this Act, shall acquit or discharge any surety or security that shall or may have been taken by or given to the said Inspectors for the due and faithful execution of his or their office, or the payment of the monies received or to be received by him or them respectively.

Officers takin
Fees besides
Salary.

28. If any person who shall be employed as Treasurer, or any other officer or servant who shall be in anywise employed by the said Inspectors for putting this Act or any of the powers thereof into execution, shall exact, take, or accept any fee or reward whatsoever other than such salaries, allowances, and rewards as are appointed by this Act, or shall be appointed, allowed, and approved of by the said Inspectors, for or on account of any thing done or to be done by virtue of this Act, or on any account whatsoever relative to putting this Act into execution, or shall in anywise be concerned or interested in any bargain or contract made or to be made by the said Inspectors;

And no person during the time he holds the Office of Inspector, shall accept or hold any office or place of trust created by virtue of this Act within the said Parish, or shall be concerned directly or indirectly in any contract with the said Parish;

Every such person so offending shall be incapable of ever serving or being employed under this Act, and shall over and above forfeit the sum of £50 to any person or persons who shall sue for the same.

Inspectors may
sue and be sued
in the name of
any one of
them.

29. The said Inspectors may sue and be sued in the name of any one of the Inspectors for the time being;

And all Actions or Suits that may be necessary or expedient to be brought for the recovery of any penalty or sum of money due or payable by virtue of this Act, or for or in respect of any other matter or thing relating to this Act, may be brought in the name of any one of the said Inspectors;

And that no Action or Suit which may be brought, commenced, or prosecuted by or against the said Inspectors, or any of them, by virtue or on account of this Act, shall abate or be discontinued by the death, resignation, or removal of such Inspector, but such Inspector shall be deemed plaintiff or defendant in any such Action or Suit (as the case may be):

Provided also, that in all cases in which the Inspector as aforesaid shall, in pursuance of this Act, be the plaintiff or defendant on the record in any Action or Actions, Suit or Suits, in which in effect the said Inspectors shall be suing or sued in the name of such one Inspector as aforesaid, he (although appearing as the plaintiff or defendant on the record) may and shall nevertheless (if not otherwise interested or objectionable) be a good examinable and competent witness in every Action or Suit either for or against the said Inspectors;

And all the affidavits of debt or service which may be necessary or expedient to be made preparatory to or in the prosecution or defence of any and every such Action, Suit, or proceeding shall and may be lawfully made by such one Inspector, notwithstanding he shall be nominal plaintiff or defendant on the record as aforesaid:

Provided also, that every or any such Inspector in whose name any Action or Suit shall be commenced, prosecuted, or defended in pursuance of this Act shall always be reimbursed and paid, out of the monies to arise by virtue of this Act, all such costs, charges, and expenses as he shall be put to or become chargeable with by reason of his being made plaintiff or defendant therein;

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And in case of his removal from office, or ceasing to act as such Inspector, all such costs, charges, and expenses shall be paid by the Inspector for the time being;

And no Inspector shall be personally answerable or liable for the payment of the same or any part of them, unless such Action or Suit shall arise in consequence of his own wilful neglect or default, or have been brought or commenced or be defended without the order or direction of the said Inspectors.

30. All acts, orders, and proceedings of the said Inspectors at any of their meetings shall be entered in a book to be kept by them for that purpose, and shall be signed by 2 of the Inspectors who were then present;

And all such acts, orders, and proceedings shall then be deemed and taken to be original acts, orders, and proceedings;

And such books shall and may be produced and read as evidence of all such acts, orders, and proceedings upon any appeal or trial or information, or any proceedings, civil or criminal, and in any Court or Courts of Law or Equity whatsoever.

31. The said Inspectors shall and they are hereby required from time to time to order and direct a book or books to be provided and kept, in which book or books shall be entered true and regular accounts of all sums of money received, paid, and expended for or on account of the purposes of this Act, and of the several articles, matters, and things for which such sums of money shall have been disbursed and paid;

And such book or books shall at all reasonable times be open to the inspection of the said Inspectors and of every inhabitant rated to the relief of the poor of the Parish adopting the provisions of this Act, without fee or reward;

And the said Inspectors and other persons aforesaid, or any of them, shall or may take copies of or extracts from the said book or books, or any part thereof, without paying for the same;

And in case the said Inspectors shall refuse to permit or shall not permit the said persons aforesaid to inspect the same, or take copies or extracts as aforesaid, such Inspector shall forfeit and pay any sum of money not exceeding 5*l.* for each default, to be levied and applied in manner hereinafter provided.

32. As soon as the Inspectors have been elected as aforesaid, it shall be lawful for them, or any 2 or more of them, from time to time to issue an Order under their hands to the Overseers of the Poor of any Parish to which the provisions of this Act shall be extended, by which Order they shall require the said Overseers to levy the amount mentioned in the said Order.

33. The Overseers aforesaid shall, for the purpose of collecting, raising, and levying the Rate necessary for the purposes of this Act, proceed in the same manner, and have the same powers, remedies, and privileges, as for levying money for the relief of the poor in the said Parish:

Provided always, that owners and occupiers of houses, buildings, and property (other than land) rateable to the relief of the poor in any such Parish shall be rated at and pay a Rate in the pound 3 times greater than that at which the owners and occupiers of land shall be rated at and pay for the purposes of this Act:

Provided also, that the total amount of the sum to be collected, raised, and levied for the purposes of this Act within any one year shall not exceed such sum as shall have been agreed on by the inhabitants of the said Parish as aforesaid, and that the said sum shall be assessed upon the full and fair annual value to which lands, houses, buildings, and other property within the said Parish shall be rated or shall be rateable according to the last Valuation made and acted upon for the Rate for the relief of the poor within the said Parish. (a)

34. Provided always, and be it further enacted, That it shall be lawful for the Overseers of the Poor of any such Parish, and they are hereby required, whenever, according to the Rate made for the relief of the poor, one and the same person shall be rated in one sum in respect of land, and also of houses, buildings, and other property, to cause such land, and also such houses, buildings, and other property to be separately assessed, and the sum hereby authorised to be levied shall be assessed accordingly:

Provided always, that every court-yard, yard, or garden (such garden not being a market garden or nursery ground) shall be included in and make part of the assessment to be made on the house, buildings, or other property to which they may be respectively attached:

Provided also, that such land, houses, buildings, and other property shall not in the whole be assessed at a higher amount than they were in the last Rate made for the relief of the poor within the said Parish.

35. If the Overseers of the Poor of any Parish adopting the provisions of this Act shall go out of office before they shall have collected or levied the amount mentioned in the Order issued under the hands of the said Inspectors in pursuance of this Act, they shall deliver to the succeeding Overseers, within seven days from the time they go out of office, a full and particular account in writing of the names of the parties from whom any money may be due on account of the Rate made in pursuance of this Act, as well as the last Order issued to them by the said Inspectors;

And in such case the succeeding Overseers shall have the like powers and remedies under this Act for the collecting and recovery thereof, and shall be liable to the same penalties and forfeitures in case of the non-payment to the said Inspectors, as their predecessors had or were liable to.

36. The Overseers of the Poor of every Parish adopting the provisions of this Act, to whom any such Order as aforesaid shall be issued, shall pay over to the amount mentioned in such Order to the Treasurer to be appointed in the said Parish under this Act within 3 calendar months from

Proceedings at Meetings of Inspectors to be entered in books, which shall be good evidence.

Accounts to be kept.

Inspectors to issue an Order to Overseers for money for Act. Power to collect Rates.

Land and houses to be rated separately.

Power of succeeding Overseers to collect Rate.

Overseers to pay amount to Treasurer.

(a) A Statement of the amount annually collected by Rate for Lighting purposes under the "Lighting Act, 1833," is to be sent annually
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to the Local Government Board by the Clerk of the Lighting Inspectors. (See 23 & 24 Vict., 52, as amended by 40 & 41 Vict., 66.)

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the delivery of such Order to one of the Overseers, and shall keep the accounts of the said Rate levied for the purposes of this Act separate and distinct from the accounts of the Rates levied in the same Parish for the relief of the poor ;

And at the time of making any payment to the said Treasurer the said Overseers shall deliver to him a note in writing signed by them, specifying the amount so paid, which note shall be kept by the Treasurer as a voucher for his receipt of that particular amount ;

And the receipt of the said Treasurer, specifying the amount paid to him by the Overseers, shall be a sufficient discharge to the Overseers for such amount, and shall be allowed as such in passing their accounts for their respective Parishes.

Other persons
authorised to
collect Poor
Rates may be
deemed Over-
seers.

37. Where any persons other than the Overseers of the Poor shall by virtue of any office or appointment be authorised and required to make and collect or cause to be collected the Rate for the Relief of the Poor in any Parish to which all or any of the provisions of this Act shall be extended, such persons, by whatsoever title they may be called, shall be deemed to be Overseers of the Poor within the meaning of this Act, and to be included under and denoted by the words "Overseers of the Poor," for all the purposes of this Act, as fully as if they were commonly called or known by the title of Overseers of the Poor.

Overseers may
be distrained
upon for Non-
payment.

38. In case the amount directed by such Order as aforesaid to be paid by the Overseers in any Parish to which all or any of the provisions of this Act shall be extended shall not be paid to the said Treasurer within the time specified for that purpose in the said Order, any Justice of the Peace, upon complaint thereof made to him by the said Treasurer or by any one of the Inspectors, may and he is hereby authorised and required to issue a Summons under his hand and seal for the said Overseers so refusing or neglecting to pay such money as aforesaid to appear before 2 Justices of the Peace ;

And upon the said Overseers appearing, or having been so summoned and not appearing without some sufficient and reasonable excuse, or not being found, it shall be lawful for the said Justices and they are hereby required, in case the said money is not paid, to issue their warrant for levying the amount, or so much thereof as may be in arrear, by distress and sale of the goods of all or any of the said Overseers ;

And in case the goods of all the Overseers shall not be sufficient to pay the same, the arrears thereof shall be added to the amount of the next levy which shall be directed to be made in such Parish for the purposes of this Act, and shall be collected by the like method.

* * * * *

Fire Engines to
be provided.

42. (a) It shall be lawful for the said Inspectors from time to time to provide and keep up fire engines, with pipes and other utensils proper for the same, for the use of the Parish adopting the provisions of this Act, and to provide a proper place or places for the keeping of the same, and to place such engines under the care of some proper person or persons, and to make him or them such allowance for his or their trouble as may be thought reasonable, and the expenses attending the providing and keeping of such engines shall be paid out of the money authorised to be received by the Inspectors under the provisions of this Act.

Lamp Irons to
be put up.

43. It shall be lawful for the said Inspectors, and they are hereby empowered, from time to time to cause such lamp irons or lamp posts or other posts to be put or fixed upon or against the walls or palisades of any houses, tenements, buildings, or inclosures (doing as little damage as may be practicable thereto), or to be put up and erected in such other manner, within all or any of the said roads, streets, and places within the limits of this Act, as they shall think proper ;

And also to cause such number of lamps, of such sizes and sorts, to be provided and affixed and put upon such lamp irons and lamp posts, as they shall think necessary for lighting all or any of such roads, streets, and places, and cause the same to be lighted with gas, oil, or otherwise, for such number of hours in every 24 hours as they shall think necessary. [The remainder of this Section relates to Watch-houses.]

Gas pipes not
to be laid on
private pre-
mises without
consent.

46. Nothing herein contained shall extend or be construed to extend to authorise or empower the said Inspectors, or any body or bodies politic or corporate, or person or persons contracting with the said Inspectors for lighting with gas such roads, streets, and public places, to carry or lay any pipe or pipes, cocks or branches from any mains or pipes, against, into, or through any dwelling-house or dwelling-houses, manufactories, public or private buildings, or to continue the same, without the consent in writing of the owner or owners, occupier or occupiers for the time being of such dwelling-house or dwelling-houses, manufactories, public or private buildings respectively,

Nor to enable any body or bodies politic or corporate, or person or persons contracting with the said Inspectors for lighting such streets and public places, to enter into or upon any private lands or grounds, without the consent in writing of the owner or owners, occupier or occupiers of such lands or grounds for that purpose first had and obtained.

Owners of pri-
vate grounds
may alter pipes.

47. In case the soil, pitching, or pavement of any road or way, for the purpose of laying any gas main or gaspipe along, under, or across the same, be broken up with the consent of the owner or owners of the said soil for the time being, and after the same shall have been so laid and placed such owner or owners shall be desirous of having the same removed, it shall be lawful for such owner or owners at any time or times thereafter, if he, she, or they shall deem it necessary or expedient, at his, her, or their own costs and charges, to alter and vary the position of such pipe or pipes, main or mains, and to relay the same,

(a) § 44 is repealed so far as regards the Metropolis by 28 & 29 Vict., c. 35.

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So that no damage be done thereby to the said body or bodies politic or corporate or person or persons contracting with the said Inspectors, and so that such body or bodies politic or corporate or person or persons contracting with the said Inspectors as aforesaid be not thereby prevented from or obstructed in lighting any public or private lamp, unless such damage or obstruction be unavoidable.

48. Whenever any gas shall be found to escape from any of the pipes which shall be laid down or set up by order of the said Inspectors in pursuance of this Act, the body or bodies politic or corporate, or person or persons whosoever, making, furnishing, or supplying any gas used or burnt for lighting any highway, street or place, or any houses, manufactory, building, or other premises within the limits of any Parish adopting the provisions of this Act, shall at their own expense, immediately after receiving notice by parol or in writing from any person or persons whatsoever, to be given or left at their office or usual place of transacting their business, of any such escape of gas, cause the most speedy and effectual measures to be taken to stop or prevent such gas from escaping;

Escape of gas.

And in case the said body or bodies politic or corporate, or person or persons as aforesaid, shall not, within 24 hours next after such notice by parol or in writing being given of any such escape of gas, effectually stop and prevent the gas from escaping, and wholly and satisfactorily remove the cause of complaint, then and in every such case the said body or bodies politic or corporate, or person or persons as aforesaid, shall for every such offence forfeit and pay any sum not exceeding £5 for each and every day, after the expiration of 24 hours from the time of giving any such notice, during which the gas shall be suffered to escape as aforesaid;

Penalty for neglect.

Which penalty shall from time to time be recoverable in a summary way, on the oath or affirmation of one or more credible witness or witnesses, before any 2 Justices of the Peace, and shall and may be recovered, with all reasonable charges, by distress and sale of the goods and chattels of any such body or bodies politic or corporate, or person or persons as aforesaid, by the warrant of any 2 Justices of the Peace as aforesaid, to be granted in like manner and subject to the like provisions as are herein directed touching other penalties to be recovered by virtue of this Act.

49. It shall be lawful for the body or bodies politic or corporate, or other person or persons whosoever, making, furnishing, or supplying any gas used or burnt for lighting any highway, street, or place, or any house, manufactory, building, or other premises, within the limits of any Parish adopting the provisions of this Act, to lay iron pipes, of such breadth, depth, and dimensions, and in such manner as they shall think expedient, under the roads, streets, and other public places within the limits of this Act, for the purpose of carrying off the washings or other waste liquids which may arise in the prosecution of the works aforesaid, the said body or bodies politic or corporate, or other person or persons as aforesaid, doing as little damage as may be in laying the said pipes, and immediately repairing, at their own expense, all such damage:

Power to convey away Washings of Gas Works.

Provided that no such washings or other waste liquids, or any other matter or thing made or arising in the manufacture of such gas, shall be conducted or conveyed into any river, brook, canal, or running stream;

And that no such pipe shall be laid in any situation where the same can, shall, or may in any manner interfere with, prejudice, or affect any of the present or future public or private wells, sewers, or drains within the limits of the Parish adopting the provisions of this Act, or without the consent of the said Inspectors.

50. If any body or bodies politic or corporate, Company or Companies of proprietors, or any other person or persons whatsoever, making, furnishing, or supplying any gas used or burnt for lighting any highway, street, or place, or any house, manufactory, building, or other premises, within the limits of any Parish adopting the provisions of this Act, shall at any time empty, drain, or convey, or cause or suffer to be emptied, drained, or conveyed, or to run or flow, any washings or other waste liquids, substances, or things whatsoever which shall arise or be made in the prosecution of the said gas works, or in the manufacture or process of making or procuring such gas, into any river, brook, or running stream, reservoir, canal, aqueduct, waterway, feeder, pond or springhead, or well, or into any drain, sewer, or ditch communicating with any of them, or do or cause to be done any annoyance, act, or thing to the water contained in any of them, whereby the water contained therein, or any part thereof, shall or may be spoiled, fouled, or corrupted, then and in every such case any such body or bodies politic or corporate, Company or Companies of proprietors, or other person or persons, so offending as aforesaid, shall forfeit and pay for every such offence the sum of £200;

Penalty for conveying Washings into any River, &c.

And such penalty or forfeiture shall and may be sued for and recovered, together with full Costs of Suit, in any of His Majesty's Courts of Law, by regular or summary Action of Debt or on the Case, or by Bill, Plaint, or Information, wherein no Essoign, Protection, Privilege, Wager of Law, nor more than one Imparlance shall be allowed;

And the whole of such penalty shall be paid to the person or persons who shall inform or sue for the same:

Provided always, that no such penalty or forfeiture shall be recoverable unless the same be sued for within 6 calendar months from after the time when such annoyance, nuisance, injury, damage, act, or thing shall have ceased and determined:

Provided also, that over and above and in addition to the said penalty of £200, and whether such penalty shall or shall not have been sued for or recovered, in case any of the said washings or other waste liquid, or noisome or offensive liquid, substances, or things, shall be emptied, drained, conducted, or conveyed, or caused or suffered to run or flow, in manner aforesaid, into any river, brook, or running stream, or any reservoir, canal, aqueduct, waterway, feeder, pond or springhead, or well, or into any drain, sewer, or ditch communicating with any of them,

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or any such annoyance, nuisance, injury, damage, act, or thing shall be done or caused to be done as aforesaid, and notice thereof in writing shall have been given by any person or persons to whom the same shall belong, or by any other person or persons whomsoever, to the said body or bodies politic or corporate, Company or Companies of proprietors, or any of them, or other the person or persons making, furnishing, or supplying any gas used or burnt for lighting any highway, street, or place, or any house, manufactory, building, or other premises, within any Parish or part of a Parish adopting the provisions of this Act, so offending, or to his, her, or their clerk or clerks, or to any person in his or their service or employ, and such body or bodies politic or corporate, Company or Companies of proprietors, or other person or persons, shall not within 24 hours after such notice shall have been given to them or him as aforesaid, stop and hinder or prevent all and every such washings, waste liquids, or noisome or offensive liquids, substances, or things, from being emptied, drained, conducted, or conveyed, or from running or flowing, in manner aforesaid, and every such other annoyance, nuisance, injury, damage, act, or thing from being done as aforesaid,

Then and in every such case the said body or bodies politic or corporate, Company or Companies of proprietors, or other person or persons so offending, shall forfeit and pay the sum of £20 for each and every day such washings, waste liquids, or noisome or offensive liquids, substances, or things, shall be so emptied, drained, conducted, or conveyed, or caused or suffered to run or flow, in manner aforesaid, or such other annoyance, nuisance, injury or damage, act or thing shall be so done or caused to be done as aforesaid;

And such last-mentioned penalty shall and may be recovered and levied in such and the like manner as any other penalty or forfeiture is in and by this Act directed to be recovered and levied, and shall be paid to the informer, or to the person or persons who, in the judgment of the Justice before whom the Conviction shall take place, shall have sustained any annoyance, injury, or damage by any such act so done or committed.

Gas Pipes to be laid 4 ft. from water pipes and in a particular manner.

51. All and every the pipes or other conduits to be used or laid for the conveyance of gas, in, under, through, along, across, or round any road, street, or other place within the limits of any Parish adopting the provisions of this Act, shall be so laid at the greatest practical distance, and whenever the width of the carriageway in such street or place will allow thereof, at the distance of 4 ft. at least from the nearest part of any water pipe already laid down or hereafter to be laid down for the conveyance of water in, under, through, along, across, or round any of the said roads, streets, or other places within the limits of any Parish adopting the provisions of this Act, excepting in cases where it shall be unavoidably necessary to lay the gas pipes across any of the said water pipes, in which cases the said gas pipes shall be laid over and above the said water pipes at the greatest practical distance therefrom, and shall form therewith a right angle, and in such cases the said gas pipes so crossing the said water pipes shall be at least 9 ft. in length, so that no joint of any of the said gas pipes shall be nearer to any part of the said water pipes than 4 ft. at least:

And in laying down the said gas pipes the said contractors or other persons supplying gas shall in no case join two or more gas pipes together previous to their being laid in the trench, but shall lay each pipe as near as may be in its place in the trench, and shall in such trench properly form the jointing with the other pipes to be added thereto with proper and sufficient materials, and shall also make and keep all and every such pipes, and all pipes connected and communicating therewith, and all the screws, joints, inlets, apertures, or openings therein respectively, air-tight, and in all and every respect prevent the said gas from escaping therefrom, upon pain of forfeiting for every offence the sum of £5.

To prevent escape of gas and contamination of water.

52. Whenever the water of any Company of proprietors for supplying the inhabitants of any houses within the limits of any Parish, part of a Parish, or place adopting the provisions of this Act, with water, shall be contaminated by any of the gas used or burnt for lighting any highway, street, or place, or any house, manufactory, building, or other premises, within the limits of any Parish, part of a Parish, or place, adopting the provisions of this Act, the body or bodies politic or corporate, or person or persons making, furnishing, or supplying such gas, shall forfeit and pay the sum of £20, to be sued for and recovered and shall be applied to and for the use and benefit of the said Company supplying water as aforesaid;

And in case any such water shall be contaminated or affected by gas in any way whatsoever, then and in every such case the said Company or other persons making, furnishing, or supplying such gas shall, within 24 hours next after the notice thereof in writing, signed by the Treasurer or other Officer of and for such water Company as aforesaid, or by any person making use of such water, to be left at the usual place or office of transacting business of the said body or bodies politic or corporate, or other person or persons, cause the most proper and effectual measures to be taken to stop and prevent gas from escaping from their mains, works, or pipes, or contaminating or affecting the water of such Company as aforesaid;

And in case the said body or bodies politic or corporate, or other person or persons, making, furnishing, or supplying gas, shall not within 24 hours next after such notice so left as aforesaid, effectually stop and prevent the gas from so escaping, and wholly and satisfactorily remove the cause of every such complaint, and prevent all and every such contamination whereof notice shall be given as aforesaid, that then the said body or bodies politic or corporate, or other person or persons as aforesaid, shall on each and every complaint forfeit and pay to the Treasurer or other officer for the time being of such water company, as aforesaid, for the use and benefit of the same company, over and above the before-mentioned penalty of £20, the sum of £10 for each and every day during which the water of the said last-mentioned Company shall be and remain contaminated or affected by such gas;

And in default of payment thereof as aforesaid, such penalty or penalties shall and may be

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recovered by Information, to be exhibited on the oath of one credible witness, by and in the name of the Treasurer or other officer for the time being of the said water company as aforesaid, or by and in the name of any one or more of the Directors of the said Company, at the option of the parties prosecuting such Information against the said body or bodies politic or corporate, or other person or persons, making, furnishing, or supplying gas, before any 2 Justices of the Peace, with Costs, to be assessed by such Justices, and to be levied by distress and sale of the goods and chattels of the said body or bodies politic or corporate, or other person or persons, making, furnishing, or supplying such gas, together with the charges of such distress and sale, by Warrant under the hand and seal of such Justices, which Warrant such Justices are hereby empowered to grant;

And such penalty or penalties, when so levied, shall be paid to the Treasurer or other officer for the time being of such water Company, for the use of such water Company.

53. In any case in which it shall be or become a question upon such complaint as aforesaid, whether the said water be contaminated or affected by the gas of the said body or bodies politic or corporate, or other person or persons, making, furnishing, or supplying any gas used or burnt for lighting any highway, street, or place, or any house, manufactory, building, or other premises, within the limits of this Act, it shall be lawful for the Company of proprietors, or other owners or proprietors of any waterworks, to dig to and about and search and examine the mains, pipes, conduits and apparatus of the said body or bodies politic or corporate, or other person or persons as aforesaid, for the purpose of ascertaining whether such contamination proceed or be occasioned by the gas of the said body or bodies politic or corporate, or other person or persons as aforesaid;

For ascertaining if the water be contaminated.

And if it shall appear that the said water has been contaminated by any escape of gas as aforesaid, the costs and expenses of the said digging, search and examination, and of the repair of the pavement of the roads, street or streets which shall be taken up or disturbed, shall be borne and paid by the said body or bodies politic or corporate, or person or persons as aforesaid;

Which costs and expenses of digging, search, and examination shall be ascertained and determined, if necessary, by such Justices as aforesaid, and be recovered in like manner as any penalty may be recovered by virtue of this Act:

Provided always, that if upon such examination it shall appear that such contamination has not arisen from any such escape of gas from any of the mains, pipes, or conduits of the said body or bodies politic or corporate, or other person or persons as aforesaid, then and in such case the said Company of proprietors, or other the owners or proprietors of such waterworks, shall bear and pay all the costs and expenses of such search, examination, and repair as aforesaid, and shall also make good to the said body or bodies politic or corporate, or other person or persons as aforesaid, any loss, injury, or damage which may be occasioned to the said mains, pipes, conduits, or apparatus of the said body or bodies politic or corporate, or other person or persons as aforesaid, in and by such search and examination, the amount of such injury, loss, or damage to be ascertained and determined by such Justices of the Peace as aforesaid.

54. Nothing in this Act contained shall extend or be construed to extend to prevent any person from proceeding by Indictment or otherwise against any of the officers, servants, or workmen of the body or bodies politic and corporate, or other person or persons whomsoever, making, furnishing, or supplying any gas used or burnt for lighting any highway, street, or place, or any house, manufactory, building, or other premises, within the limits of any Parish adopting the provisions of this Act, in respect of any works or other means which shall be employed by them or any of them in making the said gas, and using the same in furnishing with lights as aforesaid, as a public or private nuisance,

Persons supplying gas liable to be indicted for a Nuisance.

Or from bringing any action against the said body or bodies politic or corporate, Company of proprietors, or person or persons as aforesaid, or any of their officers, servants, or workmen, for any injury sustained by reason of any such works, or the use of the said gas, or the method of lighting therewith, whether such injury shall proceed from the preparation or the use of the same gas, or method of lighting, or the carelessness or want of skill or [*sic*] any of the persons employed therein, or from any other cause whatsoever.

55. If any person shall wilfully break, throw down, spoil, or damage any watch-house, watch-box, or lamp, lamp iron, lamp post, pole, rail, chain, or other furniture thereof, or wilfully extinguish the light of any such lamp, it shall be lawful for any person or persons who shall see the offence committed to apprehend, and also for any other person or persons to assist in apprehending, the offender or offenders, and by the authority of this Act, and without any warrant, and to deliver him or them to any Constable, who is to keep him, her, or them in safe custody, and with all reasonable dispatch to convey him, her, or them before any Justice of the Peace;

Penalty for wilfully destroying or injuring lamps.

And such Justice shall examine upon oath any witness or witnesses who shall appear to be produced to give evidence touching such offence;

And if the party accused shall be convicted of any such offence, either by his, her, or their confession, or upon such evidence as aforesaid, he, she, or they shall forfeit any sum not exceeding 40s. for every lamp, lamp iron, or lamp post so broken, thrown down, or damaged, and shall also make full satisfaction for the damage which shall have been done thereby, and not exceeding £5 for any other such offence as aforesaid, and shall also make full satisfaction for the damage which shall have been done thereby;

And one moiety of such forfeiture shall be paid to the person or persons apprehending such offender, and the other moiety shall be applied for the purposes of this Act, and shall be levied and recovered in the same manner as any forfeiture is by this Act herein before directed to be levied and recovered in the case of any person assaulting any watchman or other person in the execution of his duty.

56. If any person shall carelessly or accidentally break any of the said lamps, lamp irons, or

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lamp posts, or do any other such damage or injury as hereinbefore is mentioned, and shall not, upon demand, make satisfaction to the said Inspectors for the damage or injury so done, it shall and may be lawful for any Justice of the Peace, upon any complaint thereof made to him upon oath, to summon the party complained of, and upon hearing the parties upon both sides, or on the non-appearance of the party complained of, to examine the matter of complaint, and award such sum of money, by way of satisfaction to the said Inspectors for such damage, as such Justice shall think reasonable.

And in case of neglect or refusal forthwith to pay such money, then the same and all expenses attending the recovery thereof may be levied and recovered as any forfeiture is by this Act hereinbefore directed to be levied and recovered in the case of any person assaulting any watchman or other person in the execution of his duty.

Power for Inspectors to contract for the Works.

57. It shall and may be lawful to and for the said Inspectors from time to time to enter into any contract or contracts with any person, company or companies whatsoever, for lighting the same streets, roads, and other places, or any of them, or any part thereof, either with oil or with gas, or with any other material or in any other manner whatsoever, or for furnishing lamps, lamp irons, lamp posts, watch-boxes, posts, chains, pales, rails, and other things necessary for the purposes aforesaid, or any materials for the same, which contract or contracts shall specify the several works to be done and the prices to be paid for the same, and the time or times when the works shall be completed, and the penalties to be suffered in cases of non-performance thereof, and shall be signed by 2 or more of the said Inspectors, and also by the person or persons contracting to perform such works respectively, which contract or contracts, or a copy or copies thereof, shall be entered in a book to be kept for that purpose;

But no contract above the value or sum of £20 shall be entered into, unless previous to the making of any such contract 14 days' notice shall be given in one or more of the public newspapers published in the county in which the said Parish shall be situate, expressing the intention of entering into such contract, in order that any person or persons willing to undertake the same may make proposals for that purpose, to be offered and presented to the said Inspectors at a certain time and place in such notice to be mentioned:

Provided always, that if the said Inspectors shall be of opinion that it will not be advantageous to contract with the person or persons offering the lowest price, it shall be lawful for the said Inspectors to contract with such other person or persons as they shall think proper.

Inspectors may sue for breach of contract.

58. In case the same shall not be well and sufficiently performed, according to the terms, intent, and meaning of such contract or contracts, or shall not be finished or completed at or within the time or times specified in such contract or contracts, then the said Inspectors may cause an Action to be brought in any of His Majesty's Courts of Law at Westminster, against any such contractor, for any penalty contained in his contract;

And on proof of his signing the said contract or contracts, or non-performance thereof at the time or times for that purpose to be therein mentioned, the said Inspectors shall be entitled to and recover the full penalty contained in any such contract, which, when recovered, shall be applied for the purposes of this Act;

Provided always, that it shall be lawful for the said Inspectors (if they think fit) to compound and agree with any contractor for any penalty incurred by him for the breach or non-performance of any such contract, for such sum of money as the said Inspectors shall think proper, not being less than the injury or damage sustained by the breach or non-performance of such contract, and all costs, charges, and expenses which shall be occasioned thereby;

And it shall be lawful for the said Inspectors to cancel or make void any contract with any person or persons whomsoever, by mutual consent, if they shall think proper.

Inspectors may purchase or rent ground or buildings.

59. The said Inspectors may and they are hereby authorised and empowered to treat with the owner or owners and occupier or occupiers of any houses, buildings, lands, and grounds, for the purposes of this Act, for such sum or sums of money, or yearly rent, or for such time as to them shall appear reasonable, (which sum or sums of money and yearly rent shall be respectively paid out of the monies to arise by virtue of this Act), in such place or places as they may think proper.

Lamps, &c., vested in Inspectors.

60. The property of and in all lamps, lamp irons, lamp posts, watch-houses, watch-boxes, posts, chains, pales, and rails in, about, or belonging to the said streets and places within any Parish or part of a Parish, adopting the provisions of this Act, or any of them, and of and in all the iron, timber, stone, bricks, and other materials, and furniture, and things of, in, and belonging thereto, (except when the same shall be otherwise regulated by contract with the said inspectors,) shall be, and the same are, hereby vested in the said inspectors, and may be sold and disposed of from time to time as they shall think proper; and the money arising from such sale or sales shall be applied towards the purposes of this Act.

And the said Inspectors are hereby authorised and empowered to bring or cause to be brought any Action or Actions in such name or names and in manner as herein is provided, or to prefer, or order and direct the preferring of any Bill or Bills of Indictment against any person or persons who shall steal, take, or carry away (as the case may be) all or any part of such lamp irons, lamp posts, watch-houses, watch-boxes, iron, timber, and stone, bricks, furniture, posts, chains, pales, rails, or other materials and things, as aforesaid.

And in all such Actions or Bills of Indictment it shall be and be deemed and taken to be sufficient to state generally that the article or articles, thing or things, for, or on account of, which such Action or Actions shall be brought, or such Bill or Bills of Indictment preferred, is or are the property of the Inspectors, without particularly stating or specifying the name or names of all or any of the said Inspectors.

61. It shall be lawful for the Inspectors appointed by any parish adopting the provisions of

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this Act, to unite with the Inspectors of any adjoining parish or parishes, for the better carrying into effect the purposes of this Act.

62. And for the more easy prosecution and conviction of offenders against this Act, be it further enacted, that all and every Justices and Justice of the Peace before whom any person or persons shall be convicted or prosecuted for any offence against this Act shall and may cause the information and conviction respectively to be drawn in the form following, or in other words to the same effect: (that is to say,)

County of "Be it remembered that on the day of A.B. of
informeth of His Majesty's Justice [or Justices] of the Peace for the said
to wit. that of in the of
[here describe the offence, with the time and place, and follow the Act as near as may be], contrary to the provisions of an Act made in the Year of the reign of King William the Fourth, intituled [insert the title of this Act], which hath imposed a forfeiture of for the said offence. Taken the day of before "

County of "Be it remembered, that on the day of in the Year of the
to wit. Reign of and in the Year of our Lord A.B. is convicted
before of His Majesty's Justice [or Justices] of the Peace for the said
for [here specify the offence, and when and where committed] contrary to the form of the Statute made in the Year of the reign of King William the Fourth, intituled [here set forth the title of this Act]; and do hereby declare and adjudge that the said hath forfeited for the said offence the sum of [or shall be committed to for the space of as the case may be]. Given under hand and seal the day and year first above written."

Parishes may unite.

Forms of Information and Conviction.

Form of Information.

Form of Conviction.

63. All fines, penalties, and forfeitures inflicted or imposed by this Act, or by virtue of any Rule or Order made in pursuance hereof (the mode of recovery whereof is not herein otherwise provided for), may in case of non-payment thereof be recovered in a summary way, by order and adjudication of any 2 Justices of the Peace, on complaint to them for that purpose exhibited, and afterwards be levied, as well as the costs (if any) of such proceedings, on non-payment, by distress and sale of the goods and chattels of the offender or respective offenders, or person or persons liable to pay the same, by warrant under the hands and seals of such Justices, who are hereby authorised and required to summon and examine any witness upon oath or affirmation of and concerning such offences, matters and things, and to hear and determine the same;

Recovery and application of penalties.

And the overplus (if any) of the money raised or recovered, after discharging the fine, penalty, or forfeiture for which such warrant shall be issued, and the costs and expenses of recovering and levying the same (if any such there be) shall be rendered to the owner or owners of the goods and chattels so seized and distrained;

All which penalties, not herein directed to be otherwise applied, shall be paid to the said Inspectors or their Treasurer, to be applied for such purposes of this Act as the said Inspectors shall order and direct, except in all such cases where the penalty or forfeiture shall be incurred by the said Inspectors, and then the same shall be paid to the informer;

And it shall be lawful for the said Justices to order the offender or offenders so convicted to be detained in safe custody until return can be conveniently made to such warrant or warrants of distress, unless the said offender or offenders shall give sufficient security to the satisfaction of such Justices for his, her, or their appearance before the said Justices on such day or days as shall be appointed for the return of such warrant or warrants of distress, such day or days not being more than 7 days from the time of taking such security, and which security the said Justices are hereby empowered to take by way of recognizance or otherwise;

But if upon the return of such warrant or warrants it shall appear that no sufficient distress can be had whereupon to levy the said penalty or penalties and such costs as aforesaid, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of any such Justices upon the confession of the offender or offenders, or otherwise, that he, she, or they have or hath not sufficient goods and chattels whereupon such penalties, forfeitures, costs, and expenses can be levied if a warrant of distress were issued, such Justices shall not be required to issue such warrant of distress.

And thereupon it shall be lawful for such Justices, and they are hereby required and empowered, by warrant or warrants under their hands and seals, to commit such offender or offenders to the Common Gaol or House of Correction in the said County or place in which the said Parish shall be situate, there to be kept, with or without hard labour, without bail or mainprize, for any time not exceeding 6 calendar months, or until such offender or offenders shall have paid such penalty or penalties and all costs and charges attending such proceedings as aforesaid, to be ascertained by such Justices, or shall otherwise be discharged by due course of Law.

64. Nothing herein contained shall be deemed, construed, or taken to extend to render the said Inspectors personally, or any of their goods and chattels (other than such as may be invested in them in pursuance of this Act), liable to the payment of any sum or sums of money as or by way of compensation or satisfaction in the cases in which such compensation or satisfaction is herein directed to be made by the said Inspectors.

Inspectors exempt from personal liability.

* * * * *

65. If any person or persons shall find himself, herself, or themselves aggrieved by any order, direction, or appointment of the said Inspectors, or any Order or Conviction of one or more Justice or Justices of the Peace, it shall be lawful for such person or persons to Appeal to any General or Quarterly Sessions of the Peace to be held in aid for the County, City, Riding, Borough, Town, Shire, Division, Liberty, or place, in which the Parish shall be situate, within 4 calendar months

Appeal to the Quarter Sessions against Order of Inspectors, &c.

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next, after the cause of complaint shall have arisen, or if such Sessions shall be held before the expiration of one calendar month, then such Appeal shall be made to the secondly succeeding Sessions, either of which Court of Sessions is hereby empowered to hear and finally determine the matter of the said Appeal, and to make such order therein as to them shall seem meet, which order shall be final and conclusive to and upon all parties;

Provided that the person or persons so appealing shall give or cause to be given at least 14 days' notice in writing of his, her, or their intention of appealing as aforesaid, and of the matter or cause thereof, to the said Inspectors, or other the respondent or respondents, that within 5 days after such notice shall enter into a recognizance before some Justice of the Peace, with sufficient securities, conditioned to try such Appeal at the then next General Sessions or Quarter Sessions of the Peace, which shall first happen, and to abide the order of and pay such costs as shall be awarded by the Justices at such Quarter Sessions or any adjournment thereof;

And such Justices, upon hearing and finally determining such matter of Appeal, shall and may, according to their discretion, award such costs to the party appealing or appealed against as they shall think proper;

And their determination in or concerning the premises shall be conclusive and binding on all parties to all intents and purposes whatsoever.

Appeals against rate.

67. If any person or persons shall find himself, herself, or themselves aggrieved by any Rate made by the Overseers of the Poor for the purposes of this Act, he, she, or they may appeal to any General or Quarterly Sessions of the Peace to be held in and for the County, City, Riding, Borough, Town, Shire, Division, Liberty, or place in which the Parish shall be situated;

And all such Appeals shall be subject to the same rules, regulations, provisions, and directions, and shall be prosecuted and proceeded with in the like manner, as Appeals against Rates made for the Relief of the Poor in such Parish.

Plaintiff not to recover in any action after tender of sufficient amends.

68. No plaintiff or plaintiffs shall recover in any Action or Actions for any irregularity, trespass, or other proceedings made or committed in execution of this Act if Tender of sufficient Amends shall be made by or on behalf of the party or parties who shall have committed any such irregularity, trespass, or wrongful proceedings before such Action brought;

And in case no Tender shall have been made, it shall be lawful for the Defendant or Defendants in any such Action by leave of the Court where such Action shall depend, at any time before issue joined, to pay into Court such sum of money as he or they shall think fit, whereupon such proceedings, order, and adjudication shall be made, had, and given in and by such Court as in other Actions where the defendant is allowed to pay money into Court.

Limitation of actions.

69. No Action or Suit shall be commenced against any person or persons for anything done in pursuance of or under the authority of or colour of this Act until 21 days' notice has been given thereof in writing to the said Inspectors, nor after sufficient satisfaction or tender thereof has been made to the party or parties aggrieved, nor after 6 calendar months next after the fact committed for which such Action or Actions, Suit or Suits, shall be so brought;

And every such Action shall be brought, laid, and tried where the cause of Action shall have arisen, and not in any other County or place;

And the defendant or defendants in such Actions or Suits may plead the general issue, or give this Act and every special matter in evidence, at any trial or trials which shall be had thereupon;

And if the matter or thing shall appear to have been done under or by virtue of this Act, or if it shall appear that such Action or Suit was brought before 21 days' notice thereof was given as aforesaid, or if any Action or Suit shall not be commenced within the time before limited, or shall be laid in any other County or Place than as aforesaid, then the Jury or Juries shall find a verdict for the defendant or defendants therein;

Proceedings not to be unlawful for want of form. Parishes may adopt parts of Act.

70. No proceedings to be had and taken in pursuance of this Act shall be quashed or vacated for want of form, or be removed by *Certiorari* or any other writ or process whatsoever into any of His Majesty's Courts of Record at Westminster or elsewhere.

71. The provisions of this Act may be adopted in any Parish either as to lighting or as to watching, or as to lighting and watching, as may be deemed expedient;

And that the provisions of this Act may be adopted in any Parish so far as the same relate to lighting, although such Parish shall be watched under or by virtue of any Act of Parliament passed for that purpose, and may be adopted in any Parish so far as the same relate to watching, although such Parish shall be lighted under or by virtue of any Act of Parliament passed for that purpose.

Limiting the Powers of the Act. 10 Geo. IV., 44.

72. Nothing in this Act contained shall be construed to extend to abridge, repeal, alter, amend, or interfere with the powers and provisions contained in an Act made and passed in the 10th Year of the Reign of His late Majesty King George IV., intituled "An Act for Improving the Police in and near the Metropolis," or to extend to any Parish or place already regulated by or under the provisions of any Act of Parliament for all the purposes hereinbefore provided for, or to interfere with the powers which any Corporate Body may have with respect to watching and lighting.

Parts of Parishes may adopt Act.

73. It shall and may be lawful to and for the inhabitants of part of any Parish to hold a meeting of the inhabitants of such part, to be convened in manner herein directed, and to be composed of such inhabitants only, for the purpose of determining whether the provisions in this Act contained, or any of them, shall be adopted and carried into execution in such part of the said Parish;

And that all such meetings shall be subject and liable to all the clauses, regulations, and restrictions in this Act contained in respect of meetings to be convened for the purposes thereof;

And that the Churchwardens of the said Parish shall act in the same manner for such part

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of the Parish the inhabitants of which may be desirous of adopting the provisions of this Act, for carrying the provisions of the same into effect, as they could by virtue hereof act for the Parish at large;

And that the Overseers of the Poor of the said Parish, or of any Township or Division of the said Parish, shall be amenable to the provisions of this Act, so far as they may relate to the part of such Parish situate within or partly within the division or district for which such Overseers shall act, for the purpose of levying, raising, and paying the Rates within the part of such Parish adopting the provisions of this Act, in the same manner as they would be if the whole Parish, Township, or place for which they act had adopted the provisions of this Act:

Provided always, that no proceedings of the said inhabitants, nor any Rate to be raised or levied in pursuance of such proceedings, shall extend to any part of the said Parish which may already be regulated by or under the provisions of any Act for the purposes in this Act mentioned, nor interfere with the powers and provisions of such Act or the execution thereof in any respect whatsoever.

74. It shall be lawful for any Surveyor or other person or persons acting by or under the authority of Commissioners of Sewers, at any time or times in the daytime, to enter into any manufactory, gasometer, receiver, or other building belonging to any gas Company or Companies, or the said Inspectors, in order to inspect and examine if there be any escape of gas, or any washings, or other waste liquids, substances, or other things whatsoever, which shall arise or be produced in the prosecution of the said gas works, or in the manufacture or process of making or procuring such gas, into any public sewer or drain;

Surveyor of Commissioners of Sewers may enter into gas works, to see if there be any escape.

And if such Surveyor or other person or persons acting by or under the authority of Commissioners of Sewers shall at any such times or times be refused admittance or entrance into any such manufactory, gasometer, receiver, or other building, for the purpose of making such inspection and examination as aforesaid, or on being admitted shall be obstructed in or prevented from making such inspection and examination as aforesaid, the said Gas Company or Companies, or the said Inspectors, so offending, shall forfeit and pay for every such offence the sum of £20.

75. Nothing in this Act contained shall extend, or be deemed or construed to extend, to prejudice, diminish, alter, or take away any of the rights, powers, or authorities vested in Commissioners of Sewers, but all the rights, powers, and authorities vested in them shall be as good, valid, and effectual as if this Act had not been made.

Saving for Commissioners of Sewers;

76. Nothing in this Act contained shall extend to alter or in any manner to affect any of the rights or privileges of the Universities of Oxford or Cambridge, or any of the powers vested by charter or otherwise in the Chancellors, masters, and scholars, and their successors, of the said Universities.

Saving for Universities.

77. The powers given to watch and light any Parish shall be understood to be given to any Wapentake, Division, City, Borough, Liberty, Township, Market Town, Franchise, Hamlet, Tithing, Precinct, and Chapelry, or parts within the same;

Construction of Act.

And that where the word "Parish" is used, it shall be understood to extend to any parts within the same;

And that the powers given to a Churchwarden shall be understood to be given to any Chapelwarden, Overseer, or other person usually calling any meeting on parochial business;

And that the words "Justice of the Peace" shall be understood to mean Justices of the Peace for the County, City, Borough, Town, Division, Riding, Shire, Liberty, or place in which the Parish which may adopt the Provisions of this Act shall be situate;

And the word "Rate-payer" to include all persons assessed to and paying Rates for the relief of the poor.

78. This Act shall be deemed and taken to be a Public Act, and shall be judicially taken notice of as such by all Judges, Justices, and others, without being specially pleaded.

Public Act.

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[14 & 15 VICT.]

Tithe Assessment.

[C. 50.]



14 & 15 VICT., c. 50.

*Revised
Statutes, vol.
xi. p. 51.*

*An Act to amend the "Public Health Act," and an Act of the
3rd and 4th Years of King William the Fourth, in respect of
the Assessment of Tithe and Tithe Rentcharges for certain
Rates. (August 1, 1851.)*

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WHEREAS by an Act passed in the Session of Parliament of the 3rd and 4th Year of His Majesty King William IV., intituled "An Act to repeal an Act of the 11th Year of His late Majesty King George IV., for the lighting and watching of Parishes in England and Wales, and to make other Provisions in lieu thereof," it is provided, that in levying any Rate necessary for the purposes of the said Act the owners and occupiers of houses, buildings, and property (other than land) rateable to the relief of the poor in any Parish shall be rated at and pay a Rate in the pound 3 times greater than that at which the owners and occupiers of land shall be rated at and pay for the purposes of said Act :

11 & 12 Vict.
68.

And whereas by an Act passed in the Session of Parliament of the 11th and 12th Year of the Reign of Her present Majesty, intituled "An Act for promoting the Public Health," (a) it is, among other things, provided, for the purposes of the said last-mentioned Act, that the occupier of any land used as arable, meadow, or pasture ground only shall be assessed in respect of the same in the proportion of one-fourth part only of the net annual value thereof :

And whereas it is just that tithes, tithe rentcharges, and other like payments issuing out of land should be assessed for the purposes of the said Acts in the same proportion of their net annual value as such land itself : Be it enacted, &c. :

Tithes, &c., to
be assessed as
land.

Tithes, tithe rentcharges, moduses, compositions real, and other payments in lieu of tithe, shall be assessed under the firstly-recited Act as and in the same proportion of their annual value as land.

* * * * *

(a) Repealed and re-enacted by the "Public Health Act, 1875," (38 & 39 Vict., 55.)

PART II.

Digest of Cases.

THIS *Digest* has been compiled with the view of laying before the reader handy Notes of such Cases decided, for the most part, in the Superior Courts, as may be useful for the guidance of persons engaged in executing the "Lighting Act, 1833." It is to be understood, however, that, for reasons stated in the Introduction to Part I. of Book II., (*Ante*, p. 139.), Cases which incidentally relate to Street Lighting, but which have some special relation to Urban Districts only, will not be found here.

For an account of the general principles on which the details of the *Digest* have been worked out, see the Introduction to Part II. of Book I. (*Ante*, p. 95.)

1. 1842. *Beechey v. Quentery*. "Lighting Act, 1833," §§ 9 and 18—A Majority of Two-thirds is required under § 9 at the original meeting to determine on the adoption of the Act—But when the Act has been duly adopted a bare majority (either in Vestry or on a Poll) suffices to determine the amount to be raised—*Semble*, that the Parish being bound for 3 years by the adoption of the Act, the amount voted must not be merely nominal. (11 L. J., Ex., 420; 10 M. & W., 65.)

2. 1849. *Eynsham Ratepayers, In re*. "Lighting Act, 1833," § 7—Where a Statute requires a definite proportion of those present to render valid an act, there must be the specified proportion of those present voting: those who, being present, refuse to take any part cannot in such a case as this be deemed absent. (18 L. J., Q. B., 210; 12 Q. B., 398, n.; 3 New Sess. Cas., 507.)

3. 1859. *Peto v. West Ham Parish*. "Lighting Act, 1833," § 33—Wet Dock held rateable at the higher amount as being *ejusdem generis* with houses and buildings. (28 L. J., M. C., 240; 2 E. & E., 144.)

4. 1864. *Potton Churchwardens v. Brown*. "Lighting Act, 1833," adopted for part of a Parish—Rate made purporting to be a Rate on the whole Parish but actually embracing only the names of Ratepayers within the limited area—Held, that as the Rate purporting to be one for the whole Parish and as there was no power to make such a Rate, it was invalid. (10 L. T., 525.)

5. 1860. *Quick v. St. Ives Churchwardens*. "Lighting Act, 1833": "Municipal Corporations Act, 1835," § 88—Powers of Lighting Inspectors under the former Act accepted by a Town Council under the latter Act—Subsequent relinquishment by the Town Council of its Lighting functions which were resumed by the Vestry—Held that such resumption was invalid—When a Town Council adopts the Act it cannot afterwards abandon it. (2 L. T., 214; 8 W. R., 414.)

6. 1854. *Reg. v. Deverell*. "Lighting Act, 1833," § 15—Notice of the adoption of the Act need not be affixed to the doors of Dissenting Meeting-Houses, they not being "Chapels"—"Forthwith" means in a reasonable time. (23 L. J., M. C., 121; 3 E. & B., 372; [*Reg. v. Warblington*] 22 L. T., (O. S.), 304.)

7. 1857. *Reg. v. Dunn*. "Lighting Act, 1833," § 16—Meeting to adopt the Act—Decision against—Another meeting within a year—Decision in favour—Rate made and payment thereof refused by S., who on being summoned before Justices pleaded that the Rate was invalid because the second meeting was invalid being held within a year of the first—The Justices took this view and refused to issue a Distress Warrant—*Mandamus* to them to do so refused, they having acted within their jurisdiction, although perhaps their decision was erroneous, there being some evidence that the second meeting had reference to a different area from the first—The fact that S. had paid a previous Rate did not deprive him of the right to raise the objection as to the validity of the adoption of the Act. (26 L. J., M. C., 74; 7 E. & B., 220; [*Reg. v. Sussex*] 28 L. T., (O. S.), 252.)

8. 1854. *Reg. v. Kingswinford Overseers*. "Lighting Act, 1833"—Adoption by a District Chapelry—Nullity of proceedings—Distress. (23 L. J., Q. B., 337; 3 E. & B., 689; 23 L. T., (O. S.), 91.)

9. 1854. *Reg. v. Lambert*. The owners of small tenements held liable to be assessed in respect of them to Rates under the "Lighting Act, 1833," where the Owners of such tenements were assessed to the Poor Rate under the "Small Tenants Rating Act, 1850" [repealed], but only on the reduced scale prescribed by that Act. (2 C. L. R., 883; [*Reg. v. Oxfordshire*] 22 L. T., (O. S.), 219.)

10. 1853. *Reg. v. Middlesex JJ.* "Lighting Act, 1833"—Neither adoption nor a Rate is invalid because made at a Vestry presided over by a Chairman who is not a ratepayer—A Lighting Rate is a "Parochial Rate," the non-payment of which disqualifies a person from acting as Chairman of, or voting at, a meeting under the Act. (22 L. J., M. C., 106; 1 Bail Ct. Cas., 156; 21 L. T., (O. S.), 131.)

11. 1875. *Reg. v. Midland Railway Co.* A Railway is none the less rateable as land because rails are laid on it, and signal posts and huts are erected on it—Possibly, however, the huts might be rateable as buildings. (44 L. J., M. C., 137; L. R., 10 Q. B., 389; 39 J. P., 359; [*Midland R. v. Great Wigton*] 32 L. T., 753.)

12. 1871. *Reg. v. Neath Canal Co.* "Lighting Act, 1833," § 33—Canal, Towing Path, and Dry Dock held to be "land," and therefore rateable at the lower amount. (40 L. J., M. C., 193; L. R., 6 Q. B., 707; [*Neath Canal v. Neath*] 24 L. T., 871.)

13. 1864. *Reg. v. Rye JJ.* "Lighting Act, 1833," § 38—The word "Overseers" here includes "Churchwardens" although the Parish is divided and each part has Overseers of its own, the division not being under 13 & 14 Car. II., c. 12, or 59 Geo. III., c. 134—Orders under § 32 for a Rate can only be questioned by appeal under § 66. (13 W. R., 142.)

14. 1858. *Reg. v. Somersetshire JJ.* "Lighting Act, 1833"—Rating of houses and land—"Three times greater" is to be taken literally. (31 L. T., (O. S.), 215; 22 J. P., 431.)

15. 1843. *Reg. v. Whipp*. "Lighting Act, 1833," § 33—Publication of a Rate on one Church in a Parish containing 3 Churches, held insufficient. (12 L. J., M. C., 64; 3 G. & D., 372; 4 Q. B., 141; 7 J. P., 656.)

16. 1842. *Reg. v. Wilkinson*. Indictment for non-payment of Costs in obedience to an Order of Sessions—"Lighting Act, 1833," §§ 32, 33, and 66—Appeal to Sessions against an Order on Overseers dismissed on the ground that Notice of Appeal had not been served on the Justices who made the Order as well as on the Inspectors—The Sessions cannot under these circumstances award Costs to the respondent because there has been no hearing and determining of the Appeal within the meaning of § 66—Present defendant acquitted. (2 Mood. & R., 431.)

17. 1844. *Wilkinson v. Gray*. "Lighting Act, 1833"—It is competent for a part of a Parish to adopt the Act so far as that part is concerned though a Meeting of the whole Parish within a year before rejected the adoption as for the whole Parish—But the second meeting must be substantially different from the first, and not a mere evasion of the Section which prohibits the re-discussion of the question within a year of its rejection. (9 J. P., 71.)

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•• The References are to the pages.

•• Part II., the "Digest of Cases," is not dealt with here, there being two separate Indexes to that Part. (See *post.*)

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